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A TREATISE

ON

FEDERAL IMPEACHMENTS

With an Appendix containing, inter alia, an abstract of the Articles of Impeachment in all the Federal Impeachments in this Country and in England

BY

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WITH THE COMPLIMENTS OF

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PREFACE.

In the main the first sixty pages of this book were prepared by the writer as a brief in connection with the Archbald Impeachment Trial, without any idea that it would ever be published. The first great question discussed therein, viz., Can a public official be impeached for other than an indictable offence?, was not used at the trial because his colleagues and client deemed it unwise to concede that for other than criminal "misdemeanors" an impeachment would lie. That portion of the book which relates to the impressions gathered at that trial, and to the remedies which may be applied to avoid the unnecessary waste of time therein experienced, was written after the writer was requested to put the matter in form for publication. The book itself, aside from the Appendix, was published in the "University of Pennsylvania Law Review and American Law Register" for May and June, 1916. With the Appendix it is now published at the request of those who read those articles. The Appendix contains the only complete list of the English Impeachment Trials which has ever been published, so far as the writer is aware. It was made complete through the courtesy of Cuthbert Headlam, Esq., Secretary of the House of Lords, who sent to the writer typewritten copies of the articles of impeachment in a number of cases, as copied by or for him from the original records of that House. To him the writer is deeply indebted; as he is also to the Hon. Hampton L. Carson for permission to use his magnificent library of English Reports.

It has been said that the subject of impeachments is one of too little practical importance to justify its publication. Of that each person will have to judge for himself. Perhaps to some one it will give pleasure. Perhaps it may relieve some one of a little labor in a future Federal Impeachment, if any there be. In either event it will have fulfilled the law of service and the writer will be content.

Alex. Simpson, Jr.

August, 1916.

A Treatise

ON

Federal Impeachments.

The writers on the judicial history of England disagree as to when the English impeachments began. Stephens in his "History of the Criminal Law of England" says [1] that the first case was against David, the brother of Llewellyn in 1283. Pike in his "Constitutional History of the House of Lords" says [2] that it was against Richard Lyons, a merchant of London, in 1376. Hallam in his "Constitutional History of England" [3] and Anson in his "Law and Custom of the Constitution" [4] agree with Pike that it was in 1376, but say that it was against Lord Latimer.

Perhaps each of these writers fixes too early a date, if the present method of impeachment is meant, for it is reasonably clear that there was no fixed or determinate method of procedure, until after the passage of the statute of 1 Henry IV, c. 14, in 1399. Before that date the King sometimes made the complaint in person or through his Attorney-General;[5] sometimes it was made by members of the House of Commons or House of Lords;[6] and sometimes it was made by outside officials more or less directly connected with the subject matter of the controversy.[7] So also sometimes the trial was before the King alone;[8] sometimes before the King and the House of Lords together;[9]

[1] Page 146.
[2] Page 205.
[3] Page 255.
[4] Page 362.
[5] 1 Howells St. Tr. 54; 4 *Ibid* 83.
[6] 2 *Ibid* 1268.
[7] 4 Hatsell's Precedents, 67.
[8] 1 Howell's St. Tr. 40.
[9] 1 Howell's St. Tr. 126.

sometimes knights, earls, barons, and other men of note, including representatives of the boroughs and cities, decided the impeachment;[10] and at least once a jury was called in to render its decision.[11]

By the statute of 15 Edward III, c. 2, it is provided "that no peer of the land, officer, nor other because of his office . . . shall be brought in judgment . . . but by award of the said peers in Parliament" and during that reign

"the most usual course seemed to have been for the Commons to present a memorial to the King in Parliament, stating such offences as they thought at the time peculiarly injurious to the public, and praying that the delinquents (without naming them) might meet the punishment of the law. After the petitioners had received encouragement from the crown, they exhibited articles of impeachment, specifying the particular culprits, and attended the prosecution through the several stages, till, finally, on conviction they demanded judgment."[12]

Richard II, however, determined to get rid of the power of Parliament in matters of impeachment, and to that end, in 1387,

"he proposed to the judges, among others, the following question: 'Since the king can, whenever he pleases, remove any of his judges and officers, and justify or punish them for their offences, whether the lords and commoners can, without the will of the king, impeach in Parliament any of the said judges or officers for any of their offences?', to which the answer was 'that they cannot; and if any one should do so, he is to be punished as a traitor.' "[13]

Parliament severely animadverted on that opinion the next year, but a later and more subservient parliament confirmed it, and matters remained in that shape until the king resigned September 30, 1399, and was succeeded by Henry IV, in the first year of whose reign Parliament annulled the proceedings above recited, by the statute of 1 Henry IV, c. 3, and a little later the same year passed the statute of 1 Henry IV, c. 14, above referred

[10] 1 Stephens' History of the Criminal Law of England 146.
[11] Hale's Jurisdiction of Parliament 91.
[12] Woodeson's Lectures 598-599.
[13] *Ibid* 600.

to, which thereafter forbade "appeals" in Parliament and left only impeachments to be tried therein.[14] Shortly thereafter the Lords refused to try impeachments unless they were instituted by the Commons,[15] other complaints being relegated to the regular judicial officers or tribunals for their decision; and the practice thus established continued until after the Federal Convention met, in 1787, and the Constitution of the United States promulgated by it was adopted.

That the practice in the English impeachments and the abuses thereof were alike well known to the members of that Convention appears from the reports of the debates therein. Indeed the impeachment of Warren Hastings, in charge of Burke, Sheridan, and Fox, was dragging its weary length along during all that period, and the members of the Convention frequently referred to it. Keeping those facts well in mind we can best understand what was done by the Convention, and why they did it.

When it got down to work on May 29, 1787, Edmund Randolph of Virginia, submitted "sundry propositions in writing", and Charles Pinckney of South Carolina, submitted the "draft of a federal government", both of which papers were referred to the Committee of the Whole House.[16]

Mr. Randolph's ninth resolution provided, *inter alia:*

"9. Resd. that a National Judiciary be established . . . that the jurisdiction of the inferior tribunals shall be to hear and determine in the first instance, and of the supreme tribunal to hear and determine in the dernier resort, . . . impeachments of any National officers, and questions which may involve the national peace and harmony."[17]

Mr. Pinckney's "draught" was lost, but thirty-two years later he supplied what he believed to be a copy, though of even that he was not certain, which provided, *inter alia:*

[14] Woodeson's Lectures 600.
[15] 1 Stephens 156.
[16] Farrand's "Records of the Federal Convention" Vol. 1, p. 16.
[17] *Ibid* 21-22.

"That the President shall have power to grant pardons and reprieves, except in impeachments."[18]

. . . . . .

"He shall be removed from his office on impeachment by the House of Delegates and Conviction in the Supreme Court for Treason, Bribery or Corruption."[19]

. . . . . .

"One of these courts shall be termed the Supreme Court, whose Jurisdiction shall extend . . . to the trial of impeachments of Officers of the United States. . . . In cases of impeachment affecting Ambassadors and other public ministers the Jurisdiction shall be original and in all other cases appellate.

"All criminal offences (except in cases of impeachment) shall be tried in the State where they shall be committed—the trial shall be open and public, and be by jury."[20]

Mr. Pinckney's "draught" does not seem to have been considered by the Committee of the Whole, which took up the Randolph resolutions *seriatim*.

When the length of the President's term (seven years) was under consideration, Gunning Bedford, Jr., of Delaware, opposed it, because it would not be known whether the person elected was capable. "An impeachment," he said, "would be no cure for this evil, as an impeachment would reach misfeasance only, not incapacity".[21] Elbridge Gerry of Massachusetts, was in favor of adding a council to advise the President because "their opinions may be recorded—they may be called to account for their Opinions & impeached." Edmund Randolph of Virginia was of opinion that there should be more than one executive, for "if one he cannot be impeached until the expiration of his office, or he will be dependent on the Legislature—such an Unity would be against the fixed Genius of America".[22] John Dickinson of Delaware, moved that the President "be removable by the national legislature upon request by a majority of the legislatures of the individual States" [23] and gave as his reasons that "he did not like the plan of impeaching the Great

[18] Farrand; Vol. 3, p. 599.
[19] *Ibid* 600.
[20] *Ibid*.
[21] 1 Farrand 69.
[22] *Ibid* 71.
[23] *Ibid* 78.

Officers of State".[24] The Convention voted down that resolution, and on motion of Hugh Williamson of North Carolina, agreed that the President should be "removable on impeachment and conviction of malpractice or neglect of duty".[25]

On June 13, 1787, Mr. Randolph moved and the Convention adopted the following resolution:

"That the jurisdiction of the national Judiciary shall extend to cases which respect the collection of the national revenue, impeachments of any national officers, and questions which involve the national peace and harmony."[26]

All of Mr. Randolph's resolutions of May 29, 1787, having been considered and acted upon, it was resolved "that the committee do report to the Convention their proceedings".[27] In addition to the resolution above quoted in regard to the "jurisdiction of the national Judiciary", which was the thirteenth of the nineteen resolutions reported,[28] that report contained but one other resolution regarding impeachment, *viz.*, that proposed by Mr. Williamson as above:

"9. Resolved, that a National Executive be instituted to consist of a single person . . . to be removable on impeachment and conviction of malpractice or neglect of duty."[29]

On June 15, 1787, William Patterson of New Jersey, submitted a series of resolutions, which, with those of Mr. Randolph, were referred to a Committee of the Whole House.[30] His fifth resolution was:

"Resd. that a federal Judiciary be established to consist of a supreme Tribunal . . . that the Judiciary so established shall have authority to hear and determine in the first instance on all impeachments of federal officers."[31]

In the course of the debate on the Patterson resolution, Alexander Hamilton of New York, on June 18, 1787, presented a "sketch" of his ideas of a proper government, including the following:

[24] 1 Farrand 85.
[25] *Ibid* 78.
[26] *Ibid* 223-224.
[27] *Ibid* 238-239.
[28] *Ibid* 236.
[29] *Ibid* 237.
[30] *Ibid* 241.
[31] *Ibid* 244.

"IX. The Governour, Senators and all officers of the United States to be liable to impeachment for mal- and corrupt conduct; and upon conviction to be removed from office, and disqualified for holding any place of trust or profit—all impeachments to be tried by a Court to consist of the Chief or Judge of the Superior Court of Law of each State, provided such judge shall hold his place during good behavior, and have a permanent salary." [32]

The Committee of the Whole disagreed with the Patterson resolutions, never considered or acted on the Hamilton "sketch", reaffirmed its action on the Randolph resolutions, and so reported to the Convention on June 19, 1787.[33]

On July 18, 1787, the Convention unanimously struck out the words "impeachment of any national officers" from the thirteenth resolution relating to the "jurisdiction of the national judiciary".[34] This was done because it was feared that the judges might "be drawn into intrigues with the legislature and an impartial trial would be frustrated".[35] On the same day the resolution was amended so as to read:

"That the jurisdiction of the national judiciary shall extend to cases arising under laws passed by the general Legislature, and to such other questions as involve the National peace and harmony."[36]

The next day, in a long speech, Gouveneur Morris urged that the term of the President be made short, that he be eligible for re-election, but not impeachable, but that the "great officers of State" who composed his cabinet be impeachable.[37]

On July 20, 1787, the Convention considered and approved the provision that the President was "to be removable on impeachment and conviction of mal-practice or neglect of duty."

Farrand reports the proceedings as follows:[38]

"Mr. Pinckney and Mr. Gouveneur Morris moved to strike out this part of the resolution. Mr. P. observed (ought not to) be impeachable whilst in office.

"Mr. Davie. If he be not impeachable whilst in office, he will spare no efforts or means whatever to get himself re-elected. He

[32] 1 Farrand 292-293.
[33] *Ibid* 312.
[34] 2 Farrand 39.
[35] *Ibid* 42.
[36] 2 Farrand 39.
[37] *Ibid* 53-54.
[38] *Ibid* 64-69.

considered this as an essential security for the good behavior of the Executive.

"Mr. Wilson concurred in the necessity of making the Executive impeachable whilst in office.

"Mr. Govr. Morris. He can do no criminal act without coadjutors who may be punished. In case he should be re-elected, that will be sufficient proof of his innocence. Besides who is to impeach? Is the impeachment to suspend his functions? If it is not, the mischief will go on. If it is, the impeachment will be nearly equivalent to a displacement and will render the Executive dependent on those who are to impeach.

"Colonel Mason. No point is of more importance than that the right of impeachment should be continued. Shall any man be above justice? Above all shall that man be above it, who can commit the most extensive injustice? When great crimes were committed he was for punishing the principal as well as the coadjutors. There had been much debate and difficulty as to the mode of choosing the Executive. He approved of that which had been adopted at first, namely of referring the appointment to the National Legislature. One objection against electors was the danger of their being corrupted by the candidates: and this furnished a peculiar reason in favor of impeachments whilst in office. Shall the man who has practiced corruption and by that means procured his appointment in the first instance, be suffered to escape punishment by repeating his guilt?

"Docr. Franklin was for retaining the clause as favorable to the Executive. History furnishes one example only of a first Magistrate being formally brought to public justice. Everybody cried out against this as unconstitutional. What was the practice before this in cases where the Chief Magistrate rendered himself obnoxious? Why recourse was had to assassination in which he was not only deprived of his life but of the opportunity of vindicating his character. It would be the best way therefore to provide in the Constitution for the regular punishment of the Executive when his misconduct should deserve it and for his honorable acquittal when he should be unjustly accused.

"Mr. Govr. Morris admits corruption and some few other offences to be such as ought to be impeachable; but thought the cases ought to be enumerated and defined.

"Mr. (Madison) thought it indispensable that some provision should be made for defending the community against the incapacity, negligence or perfidy of the Chief Magistrate. The limitation of the period of his service, was not a sufficient security. He might lose his capacity after his appointment. He might pervert his administration into a scheme of peculation or oppression. He might betray his trust to foreign powers. The case of the Executive Magistracy was very distinguishable, from that of the legislative or of any other public body, holding offices of limited duration. It could

not be presumed that all or even a majority of the members of an assembly would either lose their capacity for discharging or be bribed to betray their trust. Besides the restraints of their personal integrity and honor, the difficulty of acting in concert for purposes of corruption was a security to the public. And if one or a few members only should be seduced, the soundness of the remaining members would maintain the integrity and fidelity of the body. In the case of the Executive Magistracy which was to be administered by a single man, loss of capacity or corruption was more within the compass of probable events, and either of them might be fatal to the Republic.

"Mr. Pinckney did not see the necessity of impeachments. He was sure they ought not to issue from the Legislature who would in that case hold them as a rod over the Executive and by that means effectually destroy his independence. His revisionary power in particular would be rendered altogether insignificant.

"Mr. Gerry urged the necessity of impeachments. A good magistrate will not fear them. A bad one ought to be kept in fear of them. He hoped the maxim would never be adopted here that the Chief Magistrate could do (no) wrong.

"Mr. King expressed his apprehensions that an extreme caution in favor of liberty might enervate the Government we were forming. He wished the House to recur to the primitive axiom that the three great departments of governments should be separate and independent: That the Executive and Judiciary should be so as well as the Legislative: That the Executive should be so equally with the Judiciary. Would this be the case if the Executive should be impeachable? It had been said that the Judiciary would be impeachable. But it should have been remembered at the same time that the Judiciary hold their places not for a limited time, but during good behavior. It is necessary, therefore, that a forum should be established for trying misbehavior. Was the Executive to hold his place during good behavior? The Executive was to hold his place for a limited term like the members of the Legislature. Like them particularly the Senate whose members would continue in appointment the same term of six years. He would periodically be tried for his behavior by his electors, who would continue or discontinue him in trust according to the manner in which he had discharged it. Like them, therefore, he ought to be subject to no intermediate trial, by impeachment. He ought not to be impeachable unless he hold his office during good behavior, a tenure which would be most agreeable to him; provided an independent and effectual forum could be devised. But under no circumstances ought he to be impeachable by the Legislature. This would be destructive to his independence and of the principles of the Constitution. He relied on the vigor of the Executive as a great security for the public liberties.

"Mr. Randolph. The propriety of impeachments was a favor-

ite principle with him. Guilt wherever found ought to be punished. The Executive will have great opportunities of abusing his power; particularly in time of war when the military force and in some respects the public money will be in his hands. Should no regular punishment be provided, it will be irregularly inflicted by tumults and insurrections. He is aware of the necessity of proceeding with a cautious hand, and of excluding as much as possible the influence of the Legislature from the business. He suggested for consideration an idea which had fallen (from Colonel Hamilton) of composing a forum out of the Judges belonging to the States: and even of requiring some preliminary inquest whether just grounds of impeachment existed.

"Doctor Franklin mentioned the case of the Prince of Orange during the late war. An agreement was made between France and Holland; by which their two fleets were to unite at a certain time and place. The Dutch fleet did not appear. Everybody began to wonder at it. At length it was suspected that the statholder was at the bottom of the matter. This suspicion prevailed more and more. Yet as he could not be impeached and no regular examination took place, he remained in his office, and strengthening his own party, as the party opposed to him became formidable, he gave birth to the most violent animosities and contentions. Had he been impeachable, a regular and peaceable inquiry would have taken place and he would if guilty have been duly punished, if innocent restored to the confidence of the public.

"Mr. King remarked that the case of the statholder was not applicable. He held his place for life, and was not periodically elected. In the former case impeachments are proper to secure good behavior. In the latter they are unnecessary; the periodical responsibility to the electors being an equivalent security.

"Mr. Wilson observed that if the idea were to be pursued, the Senators who are to hold their places during the same term with the Executive, ought to be subject to impeachment and removal.

"Mr. Pinckney apprehended that some gentlemen reasoned on a supposition that the Executive was to have powers which would not be committed to him: (He presumed) that his powers would be so circumscribed as to render impeachments unnecessary.

"Mr. Govr. Morris's opinion had been changed by the arguments used in the discussion. He was now sensible of the necessity of impeachments, if the Executive was to continue for any time in office. Our Executive was not like a magistrate having a life interest, much less like one having an hereditary interest in his office? He may be bribed by a greater interest to betray his trust; and no one would say that we ought to expose ourselves to the danger of seeing the first Magistrate in foreign pay without being able to guard against it by displacing him. One would think the King of England well secured against bribery. He has as it were a fee simple in the whole Kingdom. Yet Charles II was

bribed by Louis XIV. The Executive ought therefore to be impeachable for treachery; corrupting his electors, and incapacity were other causes of impeachment. For the latter he should be punished not as a man, but as an officer, and punished only by degradation from his office. This Magistrate is not the King but the prime Minister. The people are the King. When we make him amenable to justice, however, we should take care to provide some mode that will not make him dependent on the Legislature."

On July 23, 1787 "It was moved and seconded that the proceedings of the Convention for the establishment of a national government, except that respects the Supreme Executive, be referred to a Committee for the purpose of reporting a Constitution conformably to the Proceedings aforesaid—which passed unanimously in the affirmative".[39] This Committee known thereafter as the "Committee of Detail," consisted of John Rutledge of South Carolina, Edmund Randolph of Virginia, Nathaniel Gorham of Massachusetts, Oliver Ellsworth of Connecticut, and James Wilson of Pennsylvania.[40] On the next day the Committee of the Whole was discharged "from acting on the propositions" of Mr. Pinckney and Mr. Patterson, which were referred to the Committee of Detail.[41]

On July 26, 1787, the Convention again approved the provision that the President should "be removable on impeachment and conviction of malpractice and neglect of duty".[42]

The matters relative to the "Supreme Executive" were also referred to the Committee of Detail on the same day.[43] That Committee reported a draft of a constitution August 6, 1787, including the following:

"Art. IV, Sec. 6. The House of Representatives shall have the sole power of impeachment."[44]

"Art. X, Sec. 2. . . . He (the President) shall have power to grant reprieves and pardons; but his pardon shall not be pleadable in bar of an impeachment. . . . He shall be removed from his office on impeachment by the House of Representatives, and conviction in the Supreme Court, of treason, bribery or corruption.[45]

[39] 2 Farrand 85.
[40] *Ibid* 97.
[41] *Ibid* 98.
[42] *Ibid* 116.
[43] *Ibid* 117.
[44] *Ibid* 178-179.
[45] *Ibid* 185-186.

"Art. XI, Sec. 3. The jurisdiction of the Supreme Court shall extend . . . to the trial of impeachments of Officers of the United States. . . . In cases of impeachment the jurisdiction shall be original.[46]

"Art XI, Sec. 4. The trial of all criminal offences (except in cases of impeachment) shall be in the State where they shall be committed, and shall be by jury.[47]

"Art XI, Sec. 5. Judgment, in cases of impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any office of honor, trust or profit, under the United States. But the party convicted shall, nevertheless be liable and subject to indictment, trial, judgment and punishment according to law.[48]

"Art. XV. Any person charged with treason, felony or high misdemeanor in any State, who shall flee from justice, and shall be found in any other State shall, on demand of the Executive power of the State from which he fled, be delivered up and removed to the State having jurisdiction of the offence."[49]

The Convention agreed to Art. IV, Sec. 6 on August 9, 1787,[50] apparently without debate so far as the above clause is concerned.

On August 20, 1787, various propositions were referred to the Committee of Detail, among them the following:

"Each of the officers above mentioned [*i. e.* the President and his Cabinet] shall be liable to impeachment and removal from office for neglect of duty, malversation or corruption.

"That the Committee be directed to report . . . a mode for trying the supreme Judges in cases of impeachment."[51]

Two days later that Committee reported in favor of a Privy-Council for the President, which included the cabinet officers, but said nothing as to their impeachment, and also reported that "the Judges of the Supreme Court shall be triable by the Senate, on impeachment by the House of Representatives".[52]

On August 25, 1787, the Convention, without debate, struck out the words "but his pardon shall not be pleadable in bar of an impeachment" in Art. X, Sec. 2, and inserted in lieu thereof "except in cases of impeachment".[53] On August 27, 1787, con-

[46] 2 Farrand 186.
[47] *Ibid* 187.
[48] *Ibid* 187.
[49] *Ibid* 187-188.
[50] *Ibid* 187-188.
[51] *Ibid* 337.
[52] *Ibid* 367.
[53] *Ibid* 411.

sideration of the last clause of Art. X, Sec. 2, and Art. XI, Sec. 3, was postponed,[54] at the suggestion of Gouveneur Morris, because he thought the Supreme Court was not a proper tribunal to try an impeachment of the President, especially if, as was then being considered, the Chief Justice was to be a member of the proposed Privy Council.[55] The next day Art. XI, Sec. 4, was amended to read:

"The trial of all crimes (except in cases of impeachment) shall be by jury—and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, then the trial shall be at such place or places as the Legislature may direct."[56]

Art. XV being taken up, the words "high misdemeanor" were struck out, and "other crimes" inserted, in order to comprehend all proper cases, it being doubtful whether "high misdemeanor" had not a technical meaning too limited.[57] On August 31, 1787, it was moved and seconded "to refer such parts of the Constitution as have been postponed, and such parts of reports as have not been acted on to a Committee of a Member from each State", which passed in the affirmative and a Committee was appointed by ballot of the honorable Mr. Gilman, Mr. King, Mr. Sherman, Mr. Brearly, Mr. G. Morris, Mr. Dickinson, Mr. Carroll, Mr. Madison, Mr. Williamson, Mr. Butler, and Mr. Baldwin.[58] That committee was known as the Committee of Eleven, and reported on September 4, 1787:

"In the place of the 9th article, 1st section to be inserted 'The Senate of the United States shall have power to try all impeachments; but no person shall be convicted without the concurrence of two-thirds of the members present.' "[59]

. . . . . .

"Sec. 3. The Vice-President shall be *ex officio,* President of the Senate, except when they sit to try the impeachment of the President, in which case the Chief Justice shall preside."[60]

. . . . . .

[54] 2 Farrand 422-423.
[55] *Ibid* 427.
[56] *Ibid* 435.
[57] *Ibid* 443.
[58] *Ibid* 473.
[59] *Ibid* 493.
[60] *Ibid.*

"The latter part of the 2nd section, 10th article to read as follows: 'He shall be removed from his office on impeachment by the House of Representatives and conviction by the Senate, for treason or bribery, and in case of his removal as aforesaid, death, absence, resignation or inability to discharge the powers or duties of his office the Vice-President shall exercise those powers and duties until another President be chosen, or until the inability of the President be removed.' "[61]

In debating the changes thus made, James Wilson of Pennsylvania said on September 6, 1787:

"In allowing them (the Senate) to make the Executive and Judiciary appointments, to be the Court of impeachments, and to make treaties which are to be laws of the land, the Legislative, Executive and Judiciary powers are all blended in one branch of the Government. . . . According to the plan as it now stands, the President will not be the man of the people as he ought to be, but the Minion of the Senate."[62]

The Convention, however, approved the report of the committee in the respect referred to.

On September 8, 1787, the journal shows [63] that in the Convention it was moved and seconded to insert the words "or other high crimes and misdemeanors against the State" after the word "bribery", which passed in the affirmative. It was moved to strike out the words "by the Senate" after the word "conviction", which passed in the negative. It was moved and seconded to strike out the word "State" after the word "against" and to insert the words "United States", which passed in the affirmative unanimously. On the question to agree to the last clause of the report it passed in the affirmative. It was moved and seconded to add the following clause after the words "United States": "The Vice-President and other civil officers of the United States shall be removed from office on impeachment and conviction as aforesaid", which passed in the affirmative unanimously.

In the place of the first section of the ninth article it was moved to insert: "The Senate of the United States shall have power to try all impeachments: but no person shall be convicted

[61] 2 Farrand 495.
[62] *Ibid* 522-523.
[63] *Ibid* 545.

without the concurrence of two-thirds of the Members present: and every Member shall be on oath", which passed in the affirmative.[64]

It was moved and seconded to appoint a committee of five "to revise the style of and arrange the articles agreed to by the House", which passed in the affirmative, and a committee was appointed by ballot of Mr. Johnson, Mr. Hamilton, Mr. G. Morris, Mr. Madison, and Mr. King. That committee was entitled the "Committee of Style and Arrangement." Mr. Madison in his report of the debate says:[65]

"The clause referring to the Senate, the trial of impeachments against the President, for treason and bribery, was taken up.

"Colonel Mason. Why is the provision restrained to treason and bribery only? Treason as defined in the Constitution will not reach many great and dangerous offences. Hastings is not guilty of treason. Attempts to subvert the Constitution may not be treason as above defined. . . . As bills of attainder which have saved the British Constitution are forbidden, it is the more necessary to extend: the power of impeachments. He moved to add after 'bribery' 'or maladministration'. Mr. Berry seconded him. . . .

"Mr. Madison. So vague a term will be equivalent to a tenure during pleasure of the Senate.

"Mr. Govr. Morris. It will not be put in force and can do no harm. . . . An election of every four years will prevent maladministration.

"Colonel Mason withdrew 'maladministration' and substituted 'other high crimes and misdemeanors' (against the State).

"On the question thus altered:

"N. H. aye, Mas. aye, Ct. aye, (N. J. no.) Pa. no, Del. no, Md. aye, Va. aye, N. C. aye, S. C. aye, Del. aye (Ayes—8; noes 3).

"Mr. Madison objected to a trial of the President by the Senate, especially as he was to be impeached by the other branch of the Legislature, and for any act which might be called a misdemeanor. The President under these circumstances was made improperly dependent. He would prefer the Supreme Court for the trial of impeachments, or rather a tribunal of which that should form a part.

"Mr. Govr. Morris thought no other tribunal than the Senate could be trusted. The Supreme Court were too few in number and might be warped or corrupted. He was against a dependence of the Executive on the Legislature, considering the

[64] 2 Farrand 547.

[65] *Ibid* 550-552.

Legislative tyranny the great danger to be apprehended; but there could be no danger that the Senate would say untruly on their oaths that the President was guilty of crimes or facts, especially as in four years he can be turned out. . . .

"Mr. Pinckney disapproved of making the Senate the Court of Impeachments, as rendering the President too dependent on the Legislature. If he opposes a favorite law, the two Houses will combine against him, and under the influence of heat and faction throw him out of office.

"Mr. Williamson thought there was more danger of too much lenity than of too much rigour towards the President, considering the number of cases in which the Senate was associated with the President. . . .

"Mr. Sherman regarded the Supreme Court as improper to try the President, because the judges would be appointed by him.

"On motion by Mr. Madison to strike out the word 'by the Senate' after the word 'conviction':

"N. H. no, Mas. no, Ct. no, N. J. no, Pa. aye, Del. no, Md. no, Va. aye, N. C. no, S. C. no, Geo. no (Ayes—2; noes—9).

"In the amendment of Colonel Mason just agreed to, the word 'State' after the words 'misdemeanors against' was struck out, and the words 'United States' inserted (unanimously) in order to remove ambiguity. . . .

"On the question to agree to clause as amended: N. H. aye, May. aye, (Cont. aye,) N. J. aye, Pa. no, (Del. aye,) Md. aye, Va. aye, N. C. aye, S. C. aye, Geo. aye (Ayes—10; noes—1).

"On motion, 'the Vice-President and other civil officers of the United States shall be removed from office on impeachment and conviction as aforesaid' was added to the clause on the subject of impeachments."

The Committee of Style and Arrangement made its report on September 12, 1787, which, so far as the present matter is concerned, provided as follows:

"Art. I, Sec. 2. (d) The House of Representatives shall choose their speaker and other officers; and they shall have the sole power of impeachment.[66]

. . . . . .

"Art. I, Sec. 3. (e) The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath. When the President of the United States is tried, the Chief Justice shall preside: And no person shall be convicted without the concurrence of two-thirds of the members present.

"(f) Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold

[66] 2 Farrand 591.

and enjoy any office of honor, trust or profit under the United States: But the party convicted shall nevertheless be liable and subject to indictment, trial, judgment and punishment, according to law.[67]

. . . . . .

"Art. II, Sec. 2. The President . . . shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment.[68]

. . . . . .

"Art. II, Sec. 4. The President, Vice-President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of treason, bribery, or other high crimes and misdemeanors.[69]

"Art. III, Sec. 1. The Judicial power of the United States . . . shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish. The judges both of the supreme and inferior courts, shall hold their offices during good behavior. . . .[70]

"Art. III, Sec. 2. . . . The trial of all crimes except in cases of impeachment, shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed.[71]

"Art. III, Sec. 3. Treason against the United States, shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort." [72]

On September 14, 1787, when that report was under consideration Mr. Rutledge and Mr. Gouveneur Morris moved "that persons impeached be suspended from their office until they be tried and acquitted." Mr. Madison said the President was made too dependent already on the Legislature, by power of one branch to try him in consequence of an impeachment by the other. "This intermediate suspension", he said, "will put him in the power of one branch only. They can at any moment, in order to make way for the functions of another who will be more favorable to their views, vote a temporary removal of the existing magistrate." Mr. King concurred in the opposition to the amendment and the question to agree was lost.[73]

On the next day, September 15, 1787, the Constitution as amended was agreed to by the Convention, and ordered to be

[67] 2 Farrand 592.
[68] *Ibid* 599.
[69] *Ibid* 600.
[70] *Ibid.*
[71] *Ibid* 601.
[72] *Ibid.*
[73] *Ibid* 612-613.

engrossed, all the states voting in favor thereof,[74] and in its engrossed form it was approved two days later.[75] The only changes from the foregoing were the addition of the words "or affirmation", after the word "oath" in Art. I, Sec. 3, and the exclusion of the word "only" from Art. III, Sec. 3.

The foregoing extracts from the resolutions and debates of the Federal Convention cover, it is believed, all that is reported therein relating strictly to impeachments, and all that have any bearing on the subject in the Constitution as originally adopted. The following, from among the amendments to the Constitution, have, however, a bearing upon the matters hereinafter to be considered:

5th Amendment. " . . . nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb, nor shall he be compelled in any criminal case to be a witness against himself."

6th Amendment. "In all criminal prosecutions the accused shall enjoy the right . . . to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor; and to have the assistance of counsel for his defence."

10th Amendment. "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States are reserved to the States respectively, or to the people."

Under those constitutional provisions the first great question which faces us is:

In What Capacity Does the Senate Sit Upon the Trial of an Impeachment?

It would hardly seem that this could be an open question, or worthy of much debate if it were, yet it has been considered and acted upon in two of the impeachments in this country.

When Judge Chase was impeached, the Senate appointed a committee to propose and report rules for the conduct of the trial. In the Memoirs of John Quincy Adams, it is said:[1]

[74] 2 Farrand 633.

[75] *Ibid* 643-644-647.

[1] Vol. 1, p. 324.

"But the words *in open Court,* and *this Court* were in the reported rules, and Mr. Giles moved to strike them out on the ground that the Senate, sitting for the trial of an impeachment is not *a Court.* . . . His motive for this antipathy to the term *Court* is, that the Senate . . . may be absolved from all the rules and principles which restrain and bind down *courts of justice* to the *practice* of justice."

That motion was adopted. The motive thus attributed to Senator Giles is not that given by himself. His averred reason was this:

"Impeachment is nothing more than an enquiry, by the two Houses of Congress, whether the office of any public man might not be better filled by another.[2] . . . Impeachment was not a criminal prosecution; it was no prosecution at all. . . . A trial and removal of a judge upon impeachment need not imply any criminality or corruption in him." [3]

The matter again came up during the impeachment of President Johnson. It is said in Hinds' *Precedents of the House of Representatives:*[4]

"In 1868, after mature consideration, the Senate decided that it sat for impeachment trials as the Senate and not as a court. . . . An anxiety lest the Chief Justice might have a vote seems to have led the Senate to drop the words 'High Court of Impeachment' from its rules."

The rules as originally drafted for that trial were entitled, "Rules of Procedure and Practice in the Senate when Sitting as a High Court of Impeachment," and in several places in the body thereof the Senate is called a court. Senator Conkling, though he had in fact helped draft those rules, moved to amend by striking out the word "court," saying, *inter alia:*

"Why leave it there? If it is a court we do not destroy that character by omitting these superfluities from our rules. If it is not a court we do not clothe it with the ermine or the attributes of a court by putting in the rules that it is so." [5]

And recognizing the fact that, in all prior impeachment trials, it had been called the "high court" of impeachment" he argued that those words "had been used rather by the Secretary

[2] Vol. 1, p. 321.
[3] *Ibid* 322.
[4] Vol. 3, par. 2057 (1907).
[5] 3 Hinds' Precedents 381.

in recording the proceedings than by the Senate itself."[6] Senator Edmunds dissented from this view, and called attention to the fact that on one occasion in the Blount Impeachment, the Senate by formal resolution had called itself a "court of impeachment."[7]

Senator Conkling's motion was adopted by a vote of sixteen to thirteen,[8] but it is not possible to state how many of the sixteen so voted because they thought the words were superfluous, as Senator Conkling argued, how many so voted because they agreed with Senator Morton, also a member of the committee which adopted and reported the rules with those words in them, because their retention might "lead to consequences that we do not desire, and to difficulties",[9] or how many so voted because they did not consider that the Senate would be sitting as a court.

Notwithstanding the foregoing, when the committee, of which Senators Edmunds, Conkling, and Morton were members, came to amend the rules, they left in Rule XXIV the words "all process shall be served by the Sergeant-at-arms of the Senate, unless otherwise ordered by the *court,*"[10] and these words appear in that rule to this day, as a mute admission that, call it what you will, the Senate is a "court" when sitting for the trial of an impeachment.

Senator Edmunds might have gone much further than he did, and probably would have done so had he had time to look into the matter, for while it is true as stated by Senator Conkling that the words "High Court of Impeachment" were frequently the act of the secretary in recording the proceedings, yet those words, or the word "court" appear constantly elsewhere in the proceedings. Even in so condensed a report as the "Extracts from the Journal of the United States Senate in All Cases of Impeachment Presented by the House of Representatives, 1798-1906,"[11] similar words quite constantly appear.

[6] 3 Hinds' Precedents 379
[7] *Ibid* 381.
[8] *Ibid* 382.
[9] *Ibid* 379.
[10] *Ibid* 440.
[11] 62nd Congress, 2nd Session, Document No. 876.

Thus we find that Senator Tracy for the Senate Committee on the Impeachment of Judge Pickering, twice called it a "Court of Impeachment,"[12] and in the summons to the respondent, approved and issued by the Senate, it is four times so called.[13] So too in the impeachment of Judge Peck, Senator Tazewell called the Senate a "Court of Impeachment" once and a "court" twice.[14] Senator Webster called it a "court"[15] and Senator Foot called it a "High Court of Impeachment."[16] So too in the impeachment of Judge Humphreys, Manager Bingham called the Senate a "court,"[17] and Senator Foster twice called it "this high court of impeachment."[18]

So, too, the name would not down even in the arguments made during the impeachment of President Johnson, any more than it would in the rules, for we find Senator Howard, for the Special Committee of the Senate, calling it a "High Court of Impeachment"[19]; Senator Davis,[20] and Senator Cameron[21] calling it a "Court of Impeachment"; Senator Sumner, notwithstanding his argument to the contrary, calling it a "court"[22]; and Senator Stewart calling it a "court for the trial of the impeachment."[23]

In the impeachment of William W. Belknap, when party feeling was not running high, the Senate is ten times called a court or high court of impeachment,[24] including therein the formal replication filed by the House,[25] and the formal rejoinder filed by it,[26] and in resolution of Manager Lord,[26a] and in another offered by Senator Edmunds.[27]

So also from "Proceedings in the Senate of the United States in the Matter of the Impeachment of Charles Swayne."[28] we find that the Senate is called a "court" or a "high court of

[12] Journal, *etc.*, 19, 25.
[13] *Ibid* 23, 24.
[14] *Ibid* 62, 134, 141.
[15] *Ibid* 129.
[16] *Ibid* 132.
[17] *Ibid* 153.
[18] *Ibid* 151.
[19] *Ibid* 162.
[20] *Ibid* 195.
[21] *Ibid* 300.
[22] *Ibid* 236.
[23] *Ibid* 288.
[24] *Ibid* 340, 342, 344, 347, 379, 380, 385.
[25] *Ibid* 342.
[26] *Ibid* 347.
[26a] *Ibid* 379.
[27] *Ibid* 380.
[28] 58th Congress, 3rd Session, Document No. 694.

impeachment" twenty-one times [29] and a "court" sixty-four times.[30] Included among those who so spoke of it are Senators Bacon,[31] Bailey,[32], Fairbanks,[33] Foraker,[34] Hopkins,[35] Pettus,[36] and Spooner;[37] and Managers Clayton,[38] DeArmand,[39] Olmsted,[40] Palmer,[41] Perkins,[42] and Powers.[43]

And finally in the report of "The proceedings of the Senate and the House of Representatives on the Trial of the Impeachment of Robert W. Archbald" we find that the Senate is called a "court" or "high court of impeachment," at least one hundred and six times. Among those who so designated it are Senators Bacon,[44] Bailey,[45] Clark of Wyoming,[46] Cummins,[47] Gallinger,[48] Lodge,[49] Poindexter,[50] Smith of Georgia,[51] Smoot,[52] Sutherland,[53] and Works,[54] and Managers Clayton,[55] Sterling,[56] and Webb.[57]

[29] Proceedings, *etc.*, 54, 55, 56, 126, 151, 193, 236, 281, 289, 322, 323, 334, 371, 477, 607.

[30] *Ibid* 11, 16, 17, 18, 19, 21, 24, 25, 51, 57, 60, 66, 67, 82, 91, 106, 114, 128, 178, 180, 188, 189, 192, 193, 195, 197, 200, 266, 281, 334, 442, 482, 640.

[31] *Ibid* 16, 17, 151 322.

[32] *Ibid* 24, 51, 91, 188, 192, 193, 195, 197.

[33] *Ibid* 54, 236, 289, 323, 477.

[34] *Ibid* 114, 334.

[35] *Ibid* 197.

[36] *Ibid* 188.

[37] *Ibid* 128, 193, 482.

[38] *Ibid* 281.

[39] *Ibid* 266.

[40] *Ibid* 180.

[41] *Ibid* 62, 66, 67, 82.

[42] *Ibid* 106.

[43] *Ibid* 300, 442, 640.

[44] Proceedings on the Impeachment of Judge Archbald, 20, 42, 60, 72, 73, 94, 95, 128, 175, 249, 291, 324, 388, 875, 1105, 1220.

[45] *Ibid* 17, 19.

[46] *Ibid* 18, 27, 38, 94, 95, 96, 128, 175, 231, 1048.

[47] *Ibid* 33.

[48] *Ibid* 34, 290, 291, 807, 1048, 1146, 1219.

[49] *Ibid* 30, 31, 60, 72.

[50] *Ibid* 157.

[51] *Ibid* 291.

[52] *Ibid* 874.

[53] *Ibid* 15.

[54] *Ibid* 15, 16, 17, 20.

[55] *Ibid* 37, 60, 63, 64, 65, 68, 72, 85, 88, 93, 94, 96, 100, 110, 129, 130, 153, 154, 272, 291.

[56] *Ibid* 150, 263, 711, 1386.

[57] *Ibid* 135.

It thus seems clear that neither the attempted formal exclusion from the rules, nor a fear of "consequences," can remove from the legal mind the legal concept that the Senate is sitting as a court, whether or not it is called by that name. That concept is the necessary consequence of our inheritance of impeachments from England, and of the constitutional provisions above quoted. In England the House of Lords in trying impeachment cases has always been called the "High Court of Impeachment."[58] and it is difficult to understand why, when we were inheriting the system, we did not inherit in its essence the thing for which that title stood.[59]

If we turn to the constitutional provisions we find that they all bear out the idea that the proceeding is in its nature a judicial one:

"The Senate shall have the sole power to *try* all impeachments.

"When the President of the United States is *tried* the Chief Justice shall preside, and no person shall be *convicted* without the concurrence of two-thirds of the members present.

"Judgment in cases of impeachment shall not extend further than to removal from office. . . .

"The President shall have power to grant reprieves and pardons for *offenses* against the United States, except in cases of impeachment.

"The President . . . shall be removed from office on impeachment for, and *conviction* of, treason. . . .

"The *trial* of all crimes, except in cases of impeachment, shall be by jury. . . ."

"Trial," "conviction," "judgment," and their kindred terms, are all appropriate to judicial proceedings, and are not appropriate to anything else.

In this same connection much has been made at times of the constitutional requirement of a new oath to be taken by the Senators prior to an impeachment trial. Exactly what weight should be given to that requirement is not clear; but it may safely be concluded therefrom and from analogy to other judicial proceedings, that it was intended thereby to give greater solemnity to the trial, to impress upon the Senators their duty in the

[58] 4 Blackstone's Commentaries 258.

[59] See 6 Am. Law Reg. (n. s.) 258-259.

particular case, to show that the Senate is then sitting in a different capacity than ordinarily, and that it occupies an entirely different situation than the House, which is prosecuting. It has been claimed by some that this requirement shows that the Senate is then sitting as a court, but it does not seem necessary to enter further into that controversy.

So, too, the precedents in the Senate are all in accord with the conclusion now asserted. In the Blount Impeachment the respondent was arrested and required to give bond,[60] a course constantly pursued under the English practice,[61] a practice with which the King's Bench, in Lord Danby's case, decided they could not interfere, so long as the parliament which impeached the respondent had not been dissolved.[62]

In the Swayne Impeachment the Senate by a vote of forty-five to twenty-eight decided that the respondent's voluntary statements, made before a Committee of the House of Representatives, could not be used against him on the trial of the impeachment because of the Fifth Amendment above quoted, and of Section 859 of the Revised Statutes, which provides:

"No testimony given by a witness before either House, or before a committee of either House of Congress, shall be used in evidence in any *criminal proceeding against him in any court,* except in a prosecution for perjury in giving such testimony." [63]

So, also, the House of Representatives in the proceedings against George F. Seward, looking to his impeachment, ruled that he could not be attached for contempt in declining to be sworn, and to produce documentary evidence, because only of the above quoted provision of the Fifth Amendment to the Constitution that no person "shall be compelled in any criminal case to be a witness against himself."[64]

So, too, all the commentators on the Constitution, when speaking of the Senate in trying impeachments, speak of it as a "court." The references quoted in this article show that to be

[60] 3 Hinds' Precedents, Sec. 2296.
[61] 6 Howell's State Trials 871.
[62] Woodeson's Lectures 616, 617.
[63] Swayne Impeachment Proceedings, 187-199.
[64] 3 Hinds' Precedents, Sec. 1699.

so, as to the writers quoted, and as to the others an examination of the citations will prove it.

In antagonism to the views above expressed it has sometimes been argued that inasmuch as Art. III, Sec. 1 says that "The judicial powers of the United States shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish" that that is a constitutional assertion that the Senate in trying impeachments does not sit as a court. Perhaps it would be better to say that it shows that the Senate, when trying impeachments, is not part of the general "judicial powers of the United States," but is rather part of the political powers thereof, and in that aspect it bears upon the question, hereinafter to be considered, of the character of the offences cognizable in impeachments. But whether or not that be so, it is clear from the location of the section quoted, as well as from its context, that it refers to the ordinary or usual "judicial powers of the United States," and does not refer to impeachment trials, any more than it does to courts-martial, though both were and are well-known methods for the trial of certain offences.

It may be said that the similarity of the proceedings to those in a court, may account for the frequent use of that word in the various impeachment trials; but if that be so it concedes all that is valuable in the claim now made, for it is of no moment whether the body which tries the impeachment is called a senate or a court, if it has the attributes of and proceeds like a court. In the one event, as in the other, the constitutional rights and privileges of the respondent are protected, and that is all he has any right to ask. Happily in this country, though it was not infrequently otherwise before the House of Lords, no respondent has ever been openly deprived of any of those rights or privileges, not even President Johnson, though partisan feeling reached its highest point at that time.

The Senate, then, being a court, or proceeding as if it were, certain necessary consequences follow, which usually have been recognized and accorded:

1st. The respondent is entitled "to be informed of the nature and cause of the accusation" against him.[65]

2nd. He is entitled "to have the assistance of counsel for his defence."[66]

3rd. He is entitled "to be confronted with the witnesses against him."[67]

4th. He is entitled "to have compulsory process for obtaining witnesses in his favor."[68]

5th. He cannot "be compelled . . . to be a witness against himself."[69]

And to those constitutional privileges are to be added the following which experience has demonstrated to be necessary for the just trial of causes.

6th. The rules of evidence applicable to courts are adhered to in these trials. It has been many times so held.[70]

7th. A reasonable doubt of the respondent's guilt must result in his acquittal. This also has been many times decided, in addition to that which is herein elsewhere said upon this point.[71]

8th. The Senate must find an intent to do wrong. It is, of course, admitted that a party will be presumed to intend the natural and necessary results of his voluntary acts, but that is a presumption only, and is not always inferable from the act done.[72] So ancient is this principle, and so universal is its application, that it has long since ripened into the maxim, *Actus non facit reum mens sit rea,* and has come to be regarded as one of the "fundamental legal principles" of our system of jurisprudence.[73] True, in many cases, the circumstances surrounding the

[65] Sixth Amendment to the Constitution.

[66] *Ibid.*

[67] *Ibia.*

[68] *Ibid.*

[69] Fifth Amendment to the Constitution.

[70] 3 Hinds' Precedents 537-643; Woodeson's Lectures, 611, 612.

[71] Nebraska v. Hastings, 37 Neb. 96 (1893); Alabama v. Tally 102 Ala. 25 (1893); Alabama v. Robinson, 111 Ala. 482 (1895); 15 Am. & Eng. Ency. of Law (2nd Ed.) 1070; Watson on the Constitution (1910) Vol. 1, p. 214; Impeachment of Judge Barnard, pp. 2070, 2071.

[72] Bishop's Criminal Law, Sec. 252.

[73] Broom's Legal Maxims (8th American Ed.) 306-326.

performance of an act may be sufficient from which to infer the intent; but, nevertheless, in every criminal proceeding, the intent must be averred and proved to the satisfaction of both the trier of the law and the trier of the facts.

9th. And finally, recurring again to the Constitution, if once acquitted in impeachment proceedings he cannot "be subject for the same offence to be twice put in jeopardy."[74]

The next great question is:

What Were the Offences Embraced Within the Language "Treason, Bribery or Other High Crimes and Misdemeanors"?

"Treason" is defined in the Constitution, and therefore, no difficulty arises regarding it. "Bribery" is not so defined, yet its signification is well known. Around the words "other high crimes and misdemeanors" the war has been waged in nearly every federal impeachment, and in numerous books and magazine articles dealing with the subject of impeachment.

With arguments "equally emphatic and mutually irreconcilable" some have asserted (a) that only those offences are impeachable which were indictable crimes at the time of the adoption of the Constitution, when there was no common law of the United States; while others have said (b) that every offence which had or could have been the subject of impeachment in England prior to the adoption of the Constitution, is still a subject of impeachment here; and between them every possible resting place has been preëmpted by other settlers. It is or ought to be clear, however, that each of the extreme cases is erroneous, and that both are founded on the same error. In its ultimate analysis claim (b) like claim (a) makes this clause of the Constitution a Procustean Bed, its length fixed on September 17, 1787. No reason is apparent, however, why this provision of the Constitution should have been still-born, while the others are pulsating with a richer and better life than they possessed a century and a quarter ago. The fundamental error underlying

[74] Fifth Amendment to the Constitution.

both claims is the assertion that that which is intended to establish principles shall be treated as applicable only to facts existing at the time of their first statement. The inadequacy of the Commerce Clause alone would long ago have destroyed the Constitution had that interpretation been adopted, for railways, railroads, steamboats, telegraph, telephone, and aerial navigation, have each developed new situations not even thought of when the Constitution was adopted. It is true the government is one of limited powers, as the Tenth Amendment states, but within its limited sphere it is none the less supreme as Article VI of the Constitution says, and that sphere is large enough to embrace within it everything granted, or necessarily implied from the language used, though discovered or developed after the Constitution was adopted.

A frame of government, as a constitution is, is necessarily adopted for the future, perhaps a remote future, and not for the past, and those who adopt it cannot be presumed to have thought it was to be applied only to the then existing conditions, rather than to similar conditions certain to rise, for so to presume is to conclude that they deliberately planted in their own offspring the seed of an early death. It is well said by Judge Story in the great case of *Martin* v. *Hunter's Lessees*.[1]

"The Constitution unavoidably deals in general language. It did not suit the purpose of the people, in framing the great charter of our liberties to provide for minute specifications of its powers, or to declare the means by which those powers should be carried into execution. It was foreseen that this would be a perilous and difficult, if not an impracticable task. The instrument was not intended to provide merely for the exigencies of a few years, but was to endure through a long lapse of ages, the events of which were locked up in the inscrutable purposes of Providence. It could not be foreseen what new changes and modifications of power might be indispensable to effectuate the general objects of the charter; and restrictions and specifications which at the present, might seem salutory, might, in the end, prove the overthrow of the system itself. Hence its powers are expressed in general terms, leaving to the Legislature, from time to time, to adopt its own means to effectuate legitimate objects, and to mold and model the exercise of its powers, as its own wisdom and the public interests shall require."

[1] 1 Wheaton 326 (1816).

What then is the true meaning of "other high crimes and misdemeanors" in Article II, Section 4? If, for the moment, we consider that section by itself, disassociated from all other clauses of the Constitution, and as having no historical meaning, it will be plain that the word "misdemeanors" cannot properly be limited to criminal misdemeanors. It is said in *Holmes* v. *Jennison et al.*:[2]

"In expounding the Constitution of the United States, every word must have its due force and appropriate meaning; for it is evident from the whole instrument that no word was unnecessarily used or needlessly added. The many discussions which have taken place upon the construction of the Constitution, have proved the correctness of this proposition, and have shown the high talent, the caution and the foresight of the illustrious men who framed it. Every word appears to have been weighed with the utmost deliberation, and its force and effect to have been fully understood. No word in the instrument, therefore, can be rejected as superfluous and unmeaning."

If the word "misdemeanors" refers only to criminal misdemeanors, then it is a useless and unnecessary word, for it is embraced within the word "crimes" and the clause might as well have read only "treason, bribery, or other high crimes."

That the word "crimes" ordinarily includes misdemeanors is not doubtful. Article IV, Section 2 of the Constitution says:

"A person charged in any State with treason, felony or other crime, who shall flee from prison, and be found in another State, shall on demand of the executive authority of the State from which he fled be delivered up to be removed to the State having jurisdiction of the crime."

In construing that section the Supreme Court of the United States said in *Kentucky* v. *Dennison*:[3]

"The words 'treason, felony or other crime' in their plain and obvious import, as well as in their legal and technical sense, embrace every act forbidden and made punishable by a law of the State. The word 'crime' of itself includes every offence, from the highest to the lowest in the grade of offences, and includes what are called 'misdemeanors' as well as treason and felony."

And all the later decisions sustain that view.[4]

[2] 14 Peters 570 (1840).
[3] 24 How. 66 (1860).
[4] *Ex parte* Reggels, 114 U. S. 642 (1885).

But we are not permitted wholly to eliminate the word "misdemeanors" unless compelled so to do, and we are not in the present case, for the word has at least two meanings, one criminal and the other social, and if interpreted in the latter sense, as in England it often was, to cover offences not necessarily indictable, then it and every other word in the sentence, is given a meaning and use. Ascertained according to the principle last above quoted, the word "crimes" was used to negative the thought that the only criminal offences for which an impeachment would lie were "treason" and "bribery"; and the word "misdemeanors" was used to negative the thought that only "crimes" were impeachable.

The argument thus made cannot properly be answered by the maxims, *noscitur a sociis* and *copulatio verborum acceptionem in eodem sensu,* as is often attempted to be done in interpreting the meaning of the word "misdemeanors" in that section. It is true that those maxims are often valuable aids to interpretation, but, after all, they are only aids in ascertaining the meaning, and can have no application here, inasmuch as the words "other high crimes" exhaust the possibility of everything which *"in eodem sensu"* could be *ejusdem generis* with "treason" and "bribery"; and hence the word "misdemeanors" must be discarded as useless, which is forbidden, or else it must be given other than a criminal meaning, which is the claim now made. If the language of the Constitution were "treason, bribery, or other high felonies and misdemeanors," the requirement of criminality as to "misdemeanors" would be clear under those maxims; but as it is, the conclusion is equally clear the other way.

Unless then some other provision of the Constitution limits the meaning of the word "misdemeanors," or historically there is something which gives to the clause "other high crimes and misdemeanors," a technical meaning antagonistic to that which it bears standing alone, its normal meaning, as above, must prevail.

Arguments, of greater or less force, have been made from this and other sections of the Constitution, claiming that a more extended meaning must be given to it than that involving crim-

inality; but no argument has been presented that it is limited in meaning by its context, except such as have been suggested under Article II, Section 2, which provides:

"The President . . . shall have power to grant reprieves and pardons for offences against the United States, except in cases of impeachment."

and under Article III, Section 2, which provides:

"The trial of all crimes, except in cases of impeachment, shall be by jury. . . ."

But, properly considered, neither of those provisions militate against the view already expressed. The only inference that can fairly be drawn from the use of the word "offences" in Article II, Section 2, instead of the word "crimes," is that it was recognized that there were "offences against the United States" which were not crimes, and all those, including fines, penalties and forfeitures, could be pardoned by the President;[5] but for "offences" resulting in a conviction upon impeachment, the President was not to be permitted to pardon.

The use of the word "crimes" in Article III, Section 2, tells for neither side of the controversy, for the reason that inasmuch as the proceedings in impeachment are a trial, and that a "trial" may be for a "crime," it was necessary therein to exclude "impeachments," in order to avoid the implication, which otherwise might arise, that criminal impeachments should be tried by a jury, a point made and overruled in the Blount Impeachment, yet repeatedly insisted upon by Senator Tazewell, because of the Sixth Amendment, and referred to also in a letter of President Jefferson to James (afterwards President) Monroe.[6]

If viewed from the historical standpoint more can be said. That we can and should so view it, is clear from the general rule of construction relating to statutes, which is directly applied to the Constitution in the case of *Rhode Island* v. *Massachusetts*:[7]

[5] Osborn v. U. S., 91. U. S. 474 (1875).
[6] Jeffersonian Cyclopedia 3864.
[7] 12 Peters 658 (1838).

"In the construction of the Constitution we must look to the history of the times, and examine the state of things existing when it was framed and adopted, to ascertain the old law, the mischief, and the remedy."

Thus considered it must be conceded that from an early date the words "high crimes and misdemeanors" had been used in connection with impeachments, and may be said to have acquired thereby a technical meaning in regard thereto. It is a grave question whether or not that fact in any way affects the matter, unless the people who adopted the constitution should have so understood them, for "the words are to be taken in their natural and obvious sense, and not in a sense unreasonably restricted or enlarged,"[8] and it is the meaning of those who adopted the Constitution not of those who framed it,[9] that is the controlling factor.[10]

But whether that be so or not the same result is reached. In the impeachment of the Earl of Suffolk *et al.*,[11] in 1388, and nearly always since then, except when "treason" or "bribery and corruption" were alleged, the technical words in connection with impeachment charges have been "high crimes and misdemeanors." This will clearly appear from an examination of the impeachment trials set forth at length in the Appendix hereto. But that fact carries us but a short step forward. The question really is: Were those technical words used to cover only criminal offences? A very brief examination of the cases in the Appendix will show that they were not. Of the seven articles of impeachment against the Earl of Suffolk, but three can by any method of interpretation be held to be criminal offences, and so it appears throughout all those trials.

If we take only the cases in which "high crimes and misdemeanors" are charged, we find that, so far as the records show, no respondent was acquitted prior to the adoption of our Constitution, because the offences named in the articles were not in-

[8] Martin v. Hunter's Lessees, 1 Wheaton 326 (1816); Gibbons v. Ogden, 9 Wheaton 1 (1829).

[9] Legal Tender Cases, 79 U. S. 655 (1870).

[10] Sturges v. Croninshield, 4 Wheat. 122 (1819).

[11] 1 Howell's St. Trials 90.

dictable; and in at least the following cases the respondents were convicted, *inter alia,* of offences not indictable, *viz.:* Earl of Suffolk *et al.*,[12] Sir Giles Mompesson,[13] Sir Francis Michell,[14] Lord Treasurer Middlesex,[15] George Benyon,[16] Sir Richard Gurney,[17] Earl of Northampton *et al.*,[18] Archbishop Laud,[19] Henry Sacheverell,[20] and Earl of Macclesfield.[21] In addition thereto in a large number of cases the Commons impeached for offences not indictable, but the proceedings lapsed by the proroging or dissolution of Parliament, or because deemed not important enough to continue; or the respondents were acquitted because of disputes between the two Houses of Parliament, or for reasons in no way shown to be connected with the character of the offence, so far as indictability is concerned. Perhaps no one has summarized those impeachments better than has Judge Story in his *Commentaries on the Constitution.*[22]

"In examining the parliamentary history of impeachments, it will be found that many offences, not easily definable by law, and many of purely political character, have been deemed high crimes and misdemeanors worthy of this extraordinary remedy. Thus, lord chancellors, and judges, and other magistrates, have not only been impeached for bribery, and for acting grossly contrary to the duties of their office, but for misleading their sovereign by unconstitutional opinions, and for attempts to subvert the fundamental laws and introduce arbitrary power. So, where the lord chancellor has been thought to put the great seal to an ignominious treaty; a lord admiral to have neglected the safeguard of the sea, an ambassador to have betrayed his trust; a privy counsellor to have propounded, or supported pernicious and dishonorable measures; or a confidential adviser of his sovereign to have obtained exorbitant grants, or incompatible employments; these have been all deemed impeachable offences. Some of the offences, indeed, for which persons were impeached in the early ages of British jurisprudence, would now seem harsh and severe; but perhaps they were rendered necessary by existing corruptions, and the importance of suppressing a spirit of favoritism and court intrigue. Thus, persons have been impeached for giving bad counsel to the king;

[12] 1 Howell's St. Trials 90.
[13] 2 *Ibid* 1120.
[14] 2 *Ibid* 1132.
[15] 2 *Ibid* 1184.
[16] 4 *Ibid* 141.
[17] 4 *Ibid* 159.
[18] 4 *Ibid* 176.
[19] 4 *Ibid* 315.
[20] 15 *Ibid* 1
[21] 16 *Ibid* 767.
[22] 3rd Ed., Sec. 800.

advising a prejudicial peace; enticing the king to act against the advice of parliament; purchasing offices; giving medicine to the king without the advice of physicians; preventing other persons from giving counsel to the king, except in their presence; and prosecuting exorbitant personal grants from the king. But others, again, were founded in the most salutory public justice; such as impeachment for malversations and neglects in office; for encouraging pirates; for official oppressions, extortions and deceits; and especially for putting good magistrates out of office and advancing bad."

A still more extensive catalogue is given by Judge Lawrence in his article in the *American Law Register*,[23] which was adopted by the Managers of the House, and submitted as their brief, during the impeachment of President Johnson.[24] And it may not be inappropriate to quote what Lord Brougham said of the trial of Queen Caroline:

"The House of Commons might impeach for whatever was indictable, but they also might impeach in cases where no indictment could be found. . . .

"The learned attorney-general had held that no impeachment could lie unless some law was violated; but the opinion was contrary to the doctrine laid down by the greatest writers on the law of impeachment. Lord Coke did not so limit the power of parliament. He regarded this power as most extensive, and in describing it quoted this remarkable expression: 'That it was so large and capacious that he could not place bounds to it, either in space or time.' In short, this maxim has been laid down as irrefragable, that whatever mischief is done, and no remedy could otherwise be obtained, it is competent for parliament to impeach."

But it is said we ought to take only "the reports of the well considered cases of parliamentary impeachments, cases which were controlled by the judgments instead of the passions of men."[25] In one sense at least that is undoubtedly true, but who is to decide which are the "well considered cases"? Human nature is such that generally speaking those cases are "well considered" to each of us, which agree with our own views, and those are ill considered which disagree therewith; and we are all too prone to attribute to the "passions of men," or to their prejudices or self-interest, "judgments" which do not please us.

[23] 6 Am. L. Reg. (N. S.) 641.
[24] Suppl. to Cong. Globe, 2nd Sess., 40th Congress, 41-51.
[25] House Journal, 2nd Sess., 40th Congress 44, 53.

In matters, like the English impeachments, where there are neither statutes nor written constitutions to control the question under consideration, we are necessarily driven to determine what is the weight of authority upon a given proposition, unless we find the earlier cases overruled by the later ones, in which event the latter would ordinarily control. That much is conceded by Professor Dwight,[26] but he asserts boldly:

"The decided weight of authority is that no impeachment will lie except for a true crime, or, in other words, for a breach of the common law, or statute, which, if committed within any county of England, would be the subject of indictment or information."

It would be interesting to know what kind of scales were used in determining that "decided weight of authority," for it may safely be said that there is no authority whatsoever so deciding, unless it be the case of Lord Melville, decided in 1806, hereinafter to be more fully referred to. It is true that most of the charges were of crimes, and this must always be so, so long as impeachments are serious matters; but it no more follows therefrom that impeachments are limited to crimes, than it would follow that the "decided weight of authority" is that tenants cannot be legally excluded from their leaseholds except for non-payment of rent, because usually they are excluded for that reason.

It is also true that the respondents in a number of the cases complained that they ought not to be impeached for the acts complained of, *inter alia,* because they were not of sufficient magnitude; but so far as ascertainable there was no allegation that to be impeachable the act must be indictable. No writer on the subject, no counsel defending an impeached person, has pointed to any impeachment in which that question was raised, unless as stated, it is the case of Lord Viscount Melville in 1806.[27]

In that case Lord Melville, who was Treasurer of the Navy, was charged with wrongfully using, or permitting to be used, public moneys. The evidence did not justify the charge that any corrupt use thereof was made, but it did justify, or at least

[26] Trial by Impeachment, 6 Am. Law Reg. (N. S.) 257.
[27] 29 Howell's St. Trials, 550.

left in doubt, the question as to whether or not express authority was given for the use actually made of it. Thereupon the Lords submitted to the judges the following question:

"3. Whether it was lawful for the Treasurer of the Navy, before the passing of the Act 25 Geo. 3rd, c. 31, and more especially when by warrant from His Majesty, his salary as such treasurer as aforesaid, was augmented in full satisfaction for all wages, fees, and other profits, and emoluments, to apply any sum of money to him for navy services, to any other use whatsoever, public or private, without express authority for so doing; and whether such application by such treasurer would have been a misdemeanor, or punishable by information or indictment?"

The judges replied:

"It was not unlawful for the Treasurer of the Navy, before the Act 25 Geo. 3rd, c. 31, although after the warrant stated in the question, to apply any sum of money imprested to him for navy services, to other uses, public or private, without express authority for so doing, so as to constitute a misdemeanor punishable by information or indictment."

In other words, it was decided that prior to the passage of the act referred to it was not unlawful for the treasurer to use the public moneys "imprested to him for navy services," for other public uses, "without express authority for so doing." The question and answer referred to "public or private" uses, but no one would pretend that the use of public moneys for private purposes was not both unlawful and indictable.

The respondent was acquitted, but how many of the Lords voted to acquit him because of the above answer, and how many because his alleged offences were twenty-four years old at the time of his trial, and how many for other reasons, does not appear. It is not to be wondered at that he was acquitted when it is remembered that his impeachment was only carried in the House of Commons by the deciding vote of the Speaker, the members voting 216 for and 216 against, the younger Pitt, then Prime Minister, doing all in his power to defeat the impeachment,[28] especially when the judges ruled that he had done nothing unlawful, and had only followed the custom of prior treasurers. He has studied impeachments in vain who does not know

[28] 30 Leisure Hour 666.

that an acquittal under such circumstances decides no legal principle. Beyond that, however, the point here is that that record does not disclose that the acquittal was because the offence charged was not indictable, and hence it is not an authority for the proposition that, under the English practice, impeachment will not lie for other than indictable offences.

It is clear then that the true construction of Article II, Section 4, standing alone, compels the conclusion that the word "misdemeanors" does not mean criminal misdemeanors only; that there is nothing in the other provisions of the Constitution, nor in the English practice, which otherwise limits that construction; and hence it must be held to mean other than criminal misdemeanors.

But if the matter may be considered as doubtful, we are entitled to ask what construction has been placed upon the words "high crimes and misdemeanors" in this country, under the rule well expressed in *McPherson* v. *Blacker*:[29]

> "The framers of the Constitution employed words in their natural sense; and where they are plain and clear, resort to collateral aids to interpretation is unnecessary and cannot be indulged in to narrow or enlarge the text; but where there is ambiguity or doubt, or where two views may well be entertained contemporaneous and subsequent practical construction are entitled to the greatest weight."

So considered it will be found that the same conclusion is reached. A rather full abstract of the articles in each case will be found in the Appendix hereto, and they need be but briefly stated herein.

In Blount's case it may be conceded that all the articles charged a criminal offense, but the proceedings were dismissed because he was not a "civil officer of the United States," and hence not impeachable. Judge Pickering was impeached and convicted for releasing a vessel without requiring a bond, for refusing to hear witnesses in the case, for refusing to allow an appeal from his judgment, and for intoxication and profanity while on the Bench, none of which were indictable offences. Judge Chase was impeached and acquitted for refusing to al-

[29] 146 U. S. 1 (1894).

low counsel to argue questions of law to the jury, for overruling the request of a juror that he be excused, for overruling an offer of proof because he did not think it broad enough, for compelling counsel to submit certain questions to witnesses in writing, for awarding a capias when he should only have awarded a summons, for trying a case at too early a date, and for intemperately charging the grand jury in a quasi-political case, none of which were indictable offences. Judge Peck was impeached and acquitted for wrongfully punishing an attorney for contempt, an unindictable offence. Judge Humphreys was impeached and convicted of treason, of neglect of duty, of acting as a judge of a court of the Confederate States, and while so acting, of wrongfully arresting citizens. President Johnson was impeached and acquitted for violating the Tenure of Office Act, in removing and conspiring with others to remove Stanton as Secretary of War, in appointing General Thomas to that office, and conspiring with others to put him in possession thereof and exclude Stanton therefrom, for thereby attempting unlawfully to control the property of the United States and disburse the funds appropriated to the said department, for claiming the right to give orders to subordinate military officers other than through the general of the army, and for villifying Congress and asserting that it was a congress of but part of the United States. Secretary Belknap was impeached for bribery. Judge Swayne was impeached and acquitted for wrongfully certifying to and receiving an excessive sum for travelling expenses, for using provisions in and travelling on a parlor car in the possession of a receiver of his appointment, without paying therefor, for non-residence in the district in which he was serving, and for wrongfully punishing two attorneys and another person for contempt. Judge Archbald was tried and convicted on five of thirteen articles, not one of which charged an indictable offence.

It will be noticed, therefore, that the House of Representatives has asserted the right to impeach for other than indictable offences in every impeachment, except those of Blount and Belknap, wherein no such question arose. In the impeachments of Chase, Peck, Johnson, and Swayne a majority of the Senate,

though not two-thirds thereof, declared the respondents guilty of offences not indictable. And in the Pickering, Humphreys and Archbald cases more than two-thirds of the Senate convicted the respondents and punished them for offences not indictable.

The only other possible "contemporaneous . . . construction" would be the language expressed by the framers of the Constitution, either during its framing or shortly thereafter, and the debates in the state conventions which adopted it. While it is well recognized that the debates in the Convention are not controlling, if for no other reason than because it is "We, the people of the United States . . . (who) do ordain and establish this Constitution," yet the courts constantly resort to those debates at least for the purpose of having light thrown upon the history of the times when the Constitution was adopted, especially in view of the fact that the members of the Federal Convention were the greatest public men of that day.

The debates on the subject in the Federal Convention have hereinbefore been discussed. Nowhere therein is it even suggested that indictability has any connection with impeachability. Gunning Bedford, Jr., states that "impeachments would reach misfeasance only, not incapacity."[30] Elbridge Gerry desired a council to assist the President partly because they may be called upon to account for their opinions and impeached."[31] The Convention first voted that the President should be "removable on impeachment and conviction of mal-practice or neglect of duty."[32] Alexander Hamilton's "sketch" allowed "impeachment for mal- and corrupt conduct."[33] Gouveneur Morris admitted that "corruption and some few other offences . . . ought to be impeachable."[34] James Madison "thought it indispensable that some provision should be made for defending the Community agst the incapacity, negligence or perfidy of the chief magistrate."[35] Gouveneur Morris said, "The Executive

[30] 1 Farrand's Records of Federal Convention 16.
[31] *Ibid* 71.
[32] *Ibid* 78.
[33] *Ibid* 292, 293.
[34] 2 Farrand 64, 69.
[35] *Ibid*.

ought, therefore, to be impeachable for treachery. Corrupting his electors and incapacity were other causes of impeachment."[36]

The Committee of Eleven reported that impeachment should be had for "treason or bribery,"[37] and Colonel Mason moved to add the words "or maladministration" after the word "bribery," because the words "treason or bribery" are inadequate. Mr. Madison thought "maladministration" too vague, and then "maladministration" was withdrawn and "other high crimes and misdemeanors" substituted.[38]

The only other place where like language was used was in Article XV, reported by the Committee on Detail. It required fugitives from justice, charged with "treason, felony or high misdemeanor," to be returned to the State having jurisdiction of the offence.[39] The report of the debates says:

> "The words 'high misdemeanor' were struck out, and 'other crime' inserted, in order to comprehend all proper cases; it being doubtful whether 'high misdemeanor' had not a technical meaning too limited." [40]

The reason thus given seems a little odd, for one cannot well see how "other crimes" with that context, in view of the *ejusdem generis* rule of construction, could have a more extended meaning than "high misdemeanor" unless the latter did not include crimes at all, which would be favorable to the argument now being presented; but in no view of the matter is the change favorable to the opposite view.

An examination into the debates in the various state conventions which ratified the Constitution throws but little light upon the subject. In most of them the subject of impeachment was not debated at all, and, if referred to, it was but briefly stated as part of the pending plan. As appears from the Fourth Volume of Elliott's Debates, it was referred to at considerable length in the North Carolina Convention, and somewhat also in the South Carolina Convention. The latter debates give us no light upon the pending question, and the former but little,

[36] 2 Farrand 64, 69.
[37] *Ibid* 495.
[38] *Ibid* 550, 552.
[39] *Ibid* 187, 188.
[40] *Ibid* 443.

though it was sometimes said that the object of impeachment was the removal from office of incompetent or corrupt officials, for conduct which would not or could not be prosecuted in the ordinary criminal tribunals. There was no argument over the matter, however, the main dispute being over the question as to whether or not the Senate would convict those to whose appointment it had consented under the provisions of Article II, Section 2.

It is not without significance that in the many excellent and exhaustive briefs prepared by counsel for respondents in our impeachment proceedings, some of which were tried while members of the convention which framed the Constitution still lived, there is no assertion that any member of that convention had expressed the opinion that impeachment was only intended to cover indictable offences. A somewhat careful independent examination fails to disclose any such statement, save as hereinafter set forth. Three of the most active and able members of that convention have, however, expressed an antagonistic view of that claim. Thus Hamilton said:[41]

"A well constituted court for the trial of impeachments, is an object not more to be desired, than difficult to be obtained in a government wholly elective. The subjects of its jurisdiction are those offences which proceed from the misconduct of public men, or in other words from the abuse or violation of some public trust. They are of a nature which may with peculiar propriety be denominated political, as they relate chiefly to injuries done immediately to the society itself."

Madison, in the debate in Congress on the bill to establish a Department of Foreign Affairs said:

"Perhaps the greatest danger . . . of abuse in the executive power lies in the improper continuance of bad men in office. But . . . if an unworthy man be continued in office by an unworthy President, the House of Representatives can impeach him, and the Senate can remove him whether the President chooses or not. The danger then consists merely in this: the President can displace from office a man whose merits require that he should continue in it. What will be the motives which the President can put for such abuse of his power, and the restraints that operate to prevent it? In the first place he will be impeachable by the House before the Senate for such an act of maladministration; for I con-

[41] No. 65, Federalist.

tend that the wanton removal of meritorious officers would subject him to impeachment and removal from his own high trust." [42]

And James (afterwards Mr. Justice) Wilson, said:[43]

"In the United States . . . impeachments are confined to political characters, to political crimes, and misdemeanors and to political punishments."

The only known instance to the contrary, if it can be said to be such, is that of Luther Martin, a member of the convention from Maryland, who did not approve the Constitution, did not sign it when engrossed, and became one of its strongest opponents, both before the people and in the Maryland Convention which ratified it. He was one of the counsel for the respondent in the impeachment of Judge Chase, and therein, as such counsel, very ably but unconvincingly maintained that impeachment would only lie for indictable offences.[44]

It may not be inappropriate to remark that in the impeachment of William Blount (himself a member of the Federal Convention) one of his counsel was Jared Ingersoll (also a member thereof), but the question now under consideration was not raised, argued or decided. So also in the impeachment of Judge Chase, Senators Baldwin and Dayton had been members of the Federal Convention, and the former voted guilty on articles one, three and eight, which did not charge indictable offences. The latter voted not guilty on all the articles. The reason for the votes of either is not given in the record of the case.

It is of no small consequence, moreover, that no commentator upon the Constitution has said that impeachment was limited to indictable offences. A few state the question without passing upon it. Thus, Mr. Justice Miller, in his lectures before the students of the Law School of the National University (1891), contents himself with saying[45] that "no satisfactory definition has ever been given, or generally accepted, of the phrase 'other high crimes and misdemeanors'" probably be-

[42] 4 Elliott's Debates 373.
[43] 2 Wilson's Law Lectures 166.
[44] 3 Hind's Precedents, 760 *et seq.*
[45] Page 214.

cause the subject was not one to be discussed at length in that presence; and Meechem, in *The Law of Public Offices and Officers* (1890), states the differing views,[46] but does not discuss the matter for want of space, and because only indirectly connected with his subject. But it is believed that, without exception, all who do consider it assert that impeachment will lie for offences not indictable.[47]

It is also of some importance that judicial opinion upon the subject bears out the contention now being made. In Connecticut the Superior Court is given jurisdiction of "all offences the punishment whereof is death, or confinement in Newgate, or incapacity to hold office, and also of high crimes and misdemeanors." In State v. Knapp[48] the question which arose was whether or not the offence charged was a high crime and misdemeanor, and it was ruled:

> "High crimes and misdemeanors are such immoral and unlawful acts as are nearly allied and equal in guilt to felony, yet owing to some technical circumstances, did not fall within the definition of felony."

Two other cases have a direct bearing upon the question at issue. In *State of Nevada* v. *Borowsky*,[49] a public administrator was indicted for the appropriation to his own use of funds of an estate in his charge. The statute, upon which the indictment was founded, provided:

> "For any wilful misdemeanor in office, any public administrator may be indicted, tried, and, if guilty, fined in any sum not exceeding $2,000, and removed from office."

[46] Sec. 472.

[47] Without stopping to quote them reference may be made to Story on the Constitution (3rd Ed.) Secs. 764, 796, 797, 799, 800; Rawle on the Constitution (2nd Ed.) p. 273; Tucker on the Constitution (1899) Vol. 1, Sec. 200; Cooley's General Principles of Constitutional Law (1891) pp. 165-166; Curtis' Constitutional History of the U. S. (1895) Vol. 1, p. 482; Pomeroy's Constitutional Law (9th Ed.) Secs. 721, 724, 725, 726; Black's Hand Book of American Constitutional Law (3rd Ed.) pp. 137-138; Foster on the Constitution, p. 582 *et seq;* Watson on the Constitution (1910) Vol. 2, pp. 1027-1038; Willoughby on the Constitutional Law of the U. S. (1910) Vol. 2, Sec. 652; Boutwell on the Constitution of the U. S. at the End of the 1st Century, Sec. 427.

[48] 6 Conn., 415-417 (1827).

[49] 11 Nevada, 119 (1876).

The Court said:

"The fault of this argument, (*i. e.,* that no crime was alleged) I think, consists in attributing to the word 'misdemeanor' as used in the statute, its technical sense of a species of crime. It is evident, I think, that it is used in its more comprehensive sense of misbehavior, misconduct, violation of duty; for otherwise the word 'wilful', by which it is qualified, becomes entirely superfluous. Every crime is necessarily wilful, but misconduct, or violation of duty, is not. Taken in the latter sense, the word misdemeanor is properly qualified by the word wilful; in the former signification, the expression involves the worst sort of tautology. Besides in the one case, the whole provision becomes utterly meaningless, while in the other the construction is plain and sensible."

In *State of Nebraska* v. *Hastings,*[50] the respondent was impeached under the provision of Article V, Section 5 of the Constitution of that state, which provided that all civil officers of the state should be "liable to impeachment for any misdemeanor in office." The Court said:

"It is sufficient for our purpose at present to say that we are constrained to reject the views of Professor Dwight, Judge Curtis, and other advocates of the doctrine that an impeachable misdemeanor is necessarily an indictable offence, as too narrow, and tending to defeat rather than promote the end for which an impeachment, as a remedy, was designed, and not in harmony with the fundamental view of constitutional construction. On the other hand the contention of counsel for the State, that the term misdemeanor in office is not susceptible of a legal definition, but that every such proceeding shall be determined upon the facts in the particular case, is, to say the least, strikingly illogical."

After quoting from a number of authorities and text writers, the Court proceeds:

"It may be safely asserted that where the act of official delinquency consists in the violation of some provision of the Constitution or statute which is denounced as a crime or misdemeanor, or where it is a mere neglect of duty wilfully done, with a corrupt intention, or where the negligence is so gross and the disregard of duty so flagrant, as to warrant the inference that it was wilful or corrupt, it is within the definition of a misdemeanor in office. But where it consists of a mere error of judgment or omission of duty without the element of fraud, and where the negligence is attributable to a misconception of duty rather than a wilful disregard thereof, it is not impeachable though it may be highly prejudicial to the interests of the State."

[50] 37 Neb. 96 (1893).

In presenting the views above expressed, most of the antagonistic arguments have been incidentally considered. It remains, however, to notice a few others.

(a) It is said that inasmuch as the *lex parliamenti* does not furnish a definition for "other high crimes and misdemeanors," recourse must be had to the common law definition thereof, and we are pointed to what Blackstone says:[51]

"A crime or misdemeanor is an act committed or omitted in violation of a public law either forbidding or commanding it. This general definition comprehends both crimes and misdemeanors, which, properly speaking, are mere synonymous terms, though in common usage 'crimes' is made use of to denote such offences as are of a deeper and more atrocious dye; while smaller faults and omissions of less consequence are comprised under the gentle name of 'misdemeanors' only."

If "faults and omissions" are therein used with Blackstone's customary accuracy of expression, then they do not refer to "crimes" at all, and the quotation is not antagonistic to the present contention. If not so used, then it must be said that Blackstone had no better light upon this subject than we have, and the statement quoted does not express the fact. It never was accurate to state that "crimes and misdemeanors . . . properly speaking are (criminally speaking) mere synoynmous terms." "Properly speaking" "crimes" embraces felonies as well as "misdemeanors," especially in construing the Constitution of the United States.[52] Were it true that crimes and misdemeanors are synonoymous terms, then the only impeachable felony would be treason, for the clause would then cover only treason, bribery and other high misdemeanors. But, as shown above, we canont reject either "crimes" or "misdemeanors" as useless, and interpret the clause as if it read "treason, bribery, or other high crimes and crimes," or "treason, bribery or other high misdemeanors and misdemeanors."

(b) It is contended by the anonymous writer of the brief for the respondent in the impeachment of Charles Swayne[53] that

[51] 4 Black. Com. 5.

[52] Kentucky v. Dennison, 65 U. S. 66 (1861); *Ex parte* Reggel 114 U. S. 642 (1885).

[53] Senate Document No. 196, p. 373 *et seq.*

inasmuch as the English practice must be read into our Constitution by reason of the generality of the language used in Article II, Section 4, now under consideration; and inasmuch as, prior to the adoption of the Constitution, no judge had been impeached in England except for misbehavior *virtute officii;* and inasmuch as the status then became fixed in our Constitution and could not thereafter be added to; that, therefore, no judge can be impeached here except for like causes. But that conclusion is clearly a *non sequitur.* Waiving all the other manifest defects in the reasoning, and assuming the fact to be that no English judge was ever impeached except for misbehavior in office, it does not necessarily follow that, under the *lex parliamenti,* none could have been. If the status was fixed, it was fixed not by illustrations of the power, but by what the power in fact was. Would it be contended that if no English judge had ever been impeached, that none of ours could be? Moreover, the attempt is to make judges impeachable for fewer offences than those for which other "civil officers" are impeached, though the language of Article II, Section 4, is general, and applies alike to them and all other "civil officers"—an impossible construction.

(c) It is also said that it is absolutely necessary so to construe the Constitution, for otherwise impeached officials would be at the mercy of a temporary majority in Congress. But with or without that definition they are at that mercy. True, many of our impeachments have been decided by partisan votes, but that is an indictment of the whole system, and not of this part of it alone. It has often truly been said that the argument *ab inconvenienti* is an unsafe one. It is certainly so here, for it simply says: "I do not think the words have their natural meaning, because to give them that meaning is to enable men to decide according to their predilections"—a course they will pursue in any event.

It seems clear, therefore, notwithstanding the interesting arguments to the contrary, that the House in prosecuting and the Senate in trying impeachments, are not limited to offences which are indictable.

Hence we reach the next great question.

What Then Are the Offences Which May Result in Impeachment?

In answering this question it is not possible to prepare a final list thereof, any more than it would be if it were to include only statutory crimes, in view of the fact that each session of Congress, and each session of every State Legislature, adds to the number of crimes. It may be said in this, as in relation to everything else human, "The times change and we change with them." That which would be entirely justifiable at one time, in one place and under one set of circumstances, might be unjustifiable at another time, in another place, and under another set of circumstances. The Constitution itself recognizes this fact when it says: "The privilege of the writ of habeas corpus shall not be suspended except when in case of rebellion or invasion the public safety may require it."[1]

But *inter armes silent leges* stands not alone. The standard of conduct required of a public official in a highly civilized community may be very different from that required of another in a place peopled only by miners, cowboys, and the like. A public officer, especially a judicial one, who, without cause, persists in parading the streets and appearing in his office in grossly fantastic costume, or who insults or abuses all those who have public business to transact with him, might well be impeached for a wilful disregard of those proprieties recognized by the community in which the business of the office is transacted, and necessary to be observed in order that the public may be properly served.

So, also, the circumstances surrounding the particular individual may vary the standard of conduct. For instance, that which was permitted of Judge Field during the time he was under threat of death by David S. Terry, woud not be permitted of another under no such stress. One has only to read *Cunningham* v. *Neagle*,[2] to be satisfied of the necessity for that distinction.

[1] Art. 1, Sec. 9.
[2] 135 U. S. 51 (1890).

But that impossibility does not permit of the conclusion that there is no limitation to the offences for which impeachment will lie. If that were so then the words "treason, bribery or other high crimes and misdemeanors" would themselves be meaningless words, and that which was intended to be a measure for preserving the government "pure and undefiled," might become a means of oppression, and therefore of impurity and defilement of that very government. As Judge Story well puts it in his *Commentaries on the Constitution of the United States:*[3]

"The doctrine, indeed, would be truly alarming that the common law did not regulate, interpret, and control the powers and duties of the court of impeachment. What, otherwise, would become of the rules of evidence, the legal notions of crimes, and the application of principles of public or municipal jurisprudence to the charges against the accused? It would be a most extraordinary anomaly, that while every citizen of every state, originally composing the Union, would be entitled to the common law, as his birthright, and at once his protector and guide; as a citizen of the Union, or an officer of the Union, he would be subjected to no law, to no principles, to no rules of evidence. . . . If the common law has no existence, as to the Union, as a rule or guide, the whole proceedings are completely at the arbitrary pleasure of the government and its functionaries in all its departments."

In defining the power it is clear that the offence must be one of a serious character. The use of the word "high" imports that. It is said by Bryce in *The American Commonwealth:*[4]

"Impeachment . . . is the heaviest artillery in the congressional arsenal, but because it is so heavy it is unfit for ordinary use. It is like a hundred ton gun which needs complex machinery to bring it into position, an enormous charge of powder to fire it, and a large mark to aim at. Or to vary the simile, impeachment is what the physicians call a heroic medicine, an extreme remedy, proper to be applied against an official guilty of political crimes, but ill adapted for the punishment of small transgressions."

[3] 3rd Ed., Sec. 798.
[4] 1st Ed., p. 208.

A public officer may be criminally convicted of trespass, though acting under a claim of right, or for excessively speeding his automobile, yet neither would justify impeachment. If, however, the conviction was followed by imprisonment, impeachment might be well maintained, for the office would be brought into contempt if a convict were allowed to administer it. It may be said that, in that event, impeachment would depend on the severity or lenity of a trial judge, and this would be so, but for the office's sake, a man may be said to be guilty of a "high misdemeanor" if he so acts as to be imprisoned. Surely the whole matter can well be left to the sound judgment and discretion of the House and Senate, which doubtless would see that spite and enmity did not result in conviction on impeachment.

For the same reason, while the misdemeanors for which impeachment will lie are not necessarily indictable offences, yet they must be of such a "high" character as might properly be made criminal.[5] That far, at least, the maxim *noscitur a sociis* is applicable; for it is inconceivable that disconnected and unassociated matters would, in the same sentence, be made subject to the same criminal treatment, with possibly the same measure of punishment in case of conviction. The human mind does not travel, at one and the same time, along diverging lines, any more than the human body does; and hence those who framed and those who adopted the Constitution must alike have construed this clause as dealing with subject matters of the same generic kind.

Clearly also the offence must be one against the United States. Article II, Section 2, implies that.

Clearly also the offence must be one in some way affecting the administration of the office, from which it is sought to exclude the offender. This does not necessarily mean that it must have been an offence committed while performing the duties of the office; but it does mean that the character of the offence, or that which flows therefrom, must tend to bring the office, if the

[5] Foster on the Constitution, Sec. 93; "Law of Impeachment," 20 Case and Comment, 454.

incumbent is continued therein, into ignominy and disgrace. It will not do to say that a convicted wilful murderer could defend himself from impeachment upon the ground that the murder was not committed *virtute officii*. Nor, on the other hand, will it do to say that an alleged offence justifies impeachment simply because the House and Senate is of opinion that the respondent should have acted differently, if that which he did in no way affects the administration of the office. It is highly improbable that "treason" would be committed *virtute officii*, and bribery may not be, yet both are impeachable whether so committed or not. Hence the maxim *noscitur a sociis* would seem to exclude that as a necessity in the cases of high crimes and misdemeanors.

In endeavoring to define this power, so as to give a working and workable rule, as well as a guide to the "civil officers of the United States" who may be impeached, as to the Senate, which may try them if they overstep the bounds, one naturally turns to the Constitution itself to see if there is anything therein which will aid in the definition. In viewing the matter from that high plane it must be admitted that the limits are negatively rather than positively expressed. For instance, the First Amendment would be construed to debar an impeachment on religious grounds, or for freedom of speech or of printing, or for peaceably assembling to petition for redress of grievances; notwithstanding the numerous instances of impeachment therefor in England. But beyond these, and a few similar matters, the Constitution does not aid the definition.

The assertion so frequently made, that in the case of judges, Article III, Section 1, which says that the judges "both of the supreme and inferior courts shall hold their offices during good behavior," furnishes a guide, is necessarily a fallacious one for three reasons:

(1) It would exclude "good behavior" as a test in the case of those officers, like the President and Vice-President, specifically named in the impeachment clause, because they hold for a term and not simply "during good behavior." The words "other high crimes and misdemeanors" being applied in that clause to both classes of officers alike, must be defined alike in

its application to both. If we assume that the standard of conduct would vary with the different offices, yet that would result by reason of the character of the offices, and not by reason of the fact that one class held "during good behavior," even though it be said that the difference in the term of office is a constitutional recognition of a difference in the classes. Would any one pretend that if, by constitutional amendment, the judges would hold their offices for a term of years, that the character of offences for which they could be impeached would thereby be changed? Yet so it must be if the effect claimed must be given to the words "during good behavior." It is not meant to assert thereby that a lack of "good behavior" is not to be considered, whether in the case of a judicial or any other civil officer; but it is meant to say that the term of the judge being "during good behavior" only, is not the determinative factor in considering what, as to him, constitutes an impeachable offence.

(2) It is only by reasoning in a circle, which always ends nowhere, that even a specious character can be given to the argument. Judges, like other civil officers, can only be impeached for "treason, bribery or other high crimes and misdemeanors." Their tenure of office is "during good behavior." To say then, that "treason, bribery or other high crimes and misdemeanors" is defined, *quoad* judges only, by "good behavior," is only to say that a judge is entitled to retain his office because of "good behavior," so long as he has not been impeached and convicted of "treason, bribery, or other high crimes and misdemeanors," for only by impeachment can he be removed; and we are exactly where we started.

(3) The argument is historically inaccurate. Prior to 1700, judges, like all other officials, were removable at the pleasure of the king. By a statute passed in that year (13 William III, c. 2) it is provided:

> "Judges' commissions shall be made *quamdiu se bene gesserint*, and their salaries ascertained and established; but upon the address of both houses of parliament it may be lawful to remove them."

Under that statute a judge was safe from removal by the king alone, but his "good behavior" did not save his commission from

lapsing upon the death of the king; and it was not until the passage of the statute of 1 George III, c. 23 (1760), that the judges remained in office, despite the king's death. This statute provided:

> "The commissions of judges for the time being shall be, continue and remain, in full force, during their good behavior, notwithstanding the demise of his Majesty (whom God long preserve) or any of his heirs and successors; any law, usage or practice to the contrary thereof in any wise notwithstanding."

The whole argument on this question may be stated syllogistically. Either the word "misdemeanor" does or does not include misbehavior. If it does, it needs not the aid of the "good behavior" provision. If it does not, then as impeachment only lies for "misdemeanors," it is of no value.

Nor is the question as to the grounds for an impeachment one entirely at large, as has sometimes been argued because of the use of the word "sole" in Article I, Section 2, which provides that the House of Representatives "shall have the *sole* power of impeachment," and in Article I, Section 3, which provides that the Senate "shall have the *sole* power to try all impeachments." Those words simply emphasize the fact that, as to officers of the United States, those powers are exclusively in the House and Senate. Opponents of the Constitution, when it was before the various states for ratification, argued that they might be held to exclude the right of impeachment in the states, as against state officers, for offences against the states. The friends of the Constitution as strenuously denied this, and argued, from the character of the government itself, as a federated government—the amendments not having then been adopted —that only those powers vested in it which were granted expressly or by necessary implication, and hence, as the Constitution was intended to secure the United States as such, the language used could not be held to refer to the states or state officers. The answer was: But here it is expressly granted in the most exclusive terms. The arguments thus made formed part of the reasons for the immediate adoption of the Ninth and Tenth Amendments to the Constitution.

The argument, upon which the claim is made that the matter is in the sole discretion of the House and Senate, is substantially as follows: Article II, Section 4, which says:

"The President, Vice President and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of, treason, bribery or other high crimes and misdemeanors."

is only a designation of the minimum punishment which *shall* be imposed in case of a conviction, in impeachment proceedings, of the particular officers named for the particular offences named, and is not a designation either of who may be impeached, or the offences for which they may be impeached; and, hence, as the House has the sole power to impeach and the Senate the sole power to try the impeachment, necessarily those matters are in the "sole" discretion of those two bodies.

If this is so, then as the Constitution contains no other provision on the subject, every citizen is liable to impeachment, just as in England. In that event trial by jury may be rightfully abrogated, at the option of the House and Senate, in all cases of crimes, charged against either a citizen or an official, and the citizen is powerless, for the Constitution provides no means for a review of a conviction by the Senate; and the non-office holding citizen may be impeached for any imaginary offence, and debarred, upon conviction, of ever thereafter holding office under the United States. *Were this so, it would be easy for the House and Senate to prevent the inauguration of an antagonistic President-elect.* Happily, however, all the authorities, both in and out of the Senate, disagree with that view, and it was admitted to be incorrect by the Managers of the House in the Belknap Impeachment, and also in the Swayne Impeachment.[6]

In Story's Commentaries on the Constitution of the United States, it is said:[7]

"From this clause it appears that the remedy by impeachment is strictly confined to civil officers of the United States, including the President and Vice President. In this respect it differs mate-

[6] 3 Hinds' Precedents, Secs. 2007, 2015.
[7] 3rd Ed., Sec. 790.

rially from the law and practice of Great Britain. In that kingdom all the king's subjects, whether peers or commoners, are impeachable in parliament, though it is asserted that commoners cannot now be impeached for capital offences, but for misdemeanors only. Such kinds of misdeeds, however, as peculiarly injure the commonwealth by the abuse of high offices of trust, are the most proper, and have been the most usual ground for this kind of prosecution in parliament. There seems a peculiar propriety, in a republican government at least, in confining the impeaching power to persons holding office. In such a government all the citizens are equal and ought to have the same security of a trial by jury for all crimes and offences laid to their charge, when not holding any official character. To subject them to impeachment would not only be extremely oppressive and expensive, but would endanger their lives and liberties, by exposing them against their wills to persecution for their conduct in exercising their political rights and privileges." [8]

The same conclusion must necessarily be reached when the Constitution is considered in the light of the Tenth Amendment, which says:

"The powers not delegated to the United States by the Constitution nor prohibited by it to the States, are reserved to the States respectively, or to the people."

The maxim *expressio unius est exclusio alterius* applied to Article II, Section 4, necessarily excludes the claim that citizens can be impeached, for impeachment is therein limited to civil officers. Moreover, as only office-holders can be removed from office, it necessarily follows that the provision applies to them only. If this is not so, then the decision in the Blount Impeachment is incorrect, whether it be treated as deciding that a Senator is not within the category of "civil officers of the United States," or as deciding that one not in office when the proceedings began is not amenable to the action; for Howell's *State Trials* are full of impeachments of members of the House of Lords. So, too, the reasoning and conclusion in the Belknap

[8] The same thing is said in Rawle on the Constitution (2nd Ed.) p. 213; Pomeroy's Constitutional Law (9th Ed.) Sec. 716; Tucker on the Constitution of the United States (1899) p. 414; Black's Hand Book of American Constitutional Law (3rd Ed.) p. 137; Foster on the Constitution, Vol. 1, pp 566-570; Hinds' Precedents of the House of Representatives (1907) Vol. 3, Sec. 2315. These authorities quote the Senatorial decisions on this question, and preclude the necessity of repeating them here.

Impeachment is wrong, whether the majority or the minority were correct on the question of his liability to impeachment, because of his successful "race with the law" in getting the President to accept his resignation a few hours before the House of Representatives voted to impeach him. These considerations justify Madison's criticism of that claim as made in the Blount case as "the most extravagant novelty that has been broached."[9]

Many attempts have been made to define this power, quite commonly by those who were trying to make the definition fit the facts of a particular case, rather than to have it accord with the constitutional provisions only.[10] A notable exception to this, however, though part of the argument upon which his conclusion is founded has hereinbefore been shown to be fallacious, is what was said by Manager (afterwards President) Buchanan in the Peck Impeachment:[11]

"What is misbehavior in office? In answer to this question and without pretending to furnish a definition, I freely admit that we are bound to prove that the respondent has violated the Constitution, or some known law of the land. This, I think, is the principle fairly to be deduced from all the arguments on the trial of Judge Chase, and from the votes of the Senate on the Articles of Impeachment against him, in opposition to the principle for which his counsel in the first instance strenuously contended, that in order to render an offence impeachable it must be indictable. But this violation of law may consist in the abuse, as well as in the usurpation of authority. The abuse of a power which has been given may be as criminal as the usurpation of a power that has not been granted."

Perhaps that statement should be broadened to include offences of so weighty a character, and so injurious to the office, that every official is bound to know that they are of the same general character as crimes, and might well be made criminal by statute; but the *terra incognita* beyond, no one can properly be asked to explore under the existing constitutional provisions, if for no other reason than because it is a fixed and salutary

[9] 2 American Political and Social Science Review, 386.

[10] Suppl. to Cong. Globe, 2nd Sess. 40th Congress, pp. 50, 254; 3 Hinds' Precedents, Secs. 2357, 2379; Story on the Constitution (3rd Ed.) Sec. 764; 1 Foster on the Constitution 591-598.

[11] 3 Hinds' Precedents, Sec. 2381.

principle that penal provisions shall be so construed that the persons to be affected by them may certainly know what things they are forbidden to do. That rule, which Chief Justice Marshall said, "is perhaps not much less old than construction itself,"[12] is of enduring importance, for it ever must be, in the language of Coke, that "the known certaintie of the law is the safetie of all," and if it be true that in this matter there is no definiteness, then it is the only matter in Anglo-Saxon jurisprudence in which a man may be punished for an offence the nature of which it was not intended that he should know.

It is said that the learned Chairman of the Managers for the House of Representatives in the Archbald Impeachment, said that in convicting the respondent, the Senate had adopted "a code of judicial ethics for the first time in American history."[13] If by that was meant that "for the first time in American history" a judge was successfully impeached for doing that which was governed by no law except the universal law of good conduct, which every judge is supposed to know and give heed to, no objection can be taken thereto. But if it was meant to say that it was thereby determined that a judge can be impeached for a mere breach of "a code of judicial ethics," then may we recall that "it was long ago remarked by DeTocqueville that a decline of public morals in the United States would probably be marked by the abuse of the power of impeachment as a means of crushing political adversaries or ejecting them from office,"[14] for that unwritten "code" varies with the times and with the place, and almost with the individual citizen.

Ex-President Taft, in an address before the American Bar Association in 1913, stated that the result of that trial was a "liberal interpretation of the term 'high misdemeanor.'" He said it was

"most useful in demonstrating to all incumbents of the federal bench that they must be careful in their conduct outside of court as well as in the court itself, and that they must not use the

[12] U. S. v. Wiltberger, 5 Wheaton 76 (1820).
[13] Harper's Weekly, Feb. 15, 1913, p. 9.
[14] 1 Hare: Amer. Const. Law 211.

prestige of their official position, directly or indirectly, to secure personal benefit." [15]

The objection to that statement is that so long as humanity remains as it is, "the prestige of their official position" will nearly always enure "directly or indirectly, to secure personal benefit" to a judge, if he transacts any outside business, or even makes investments or purchases. Moreover, as the Managers of the House in that case repeatedly stated that they did not challenge the Judge's ability, integrity, or impartiality,[16] perhaps a better way of expressing the result of the trial would be to say that it determined that a judge ought not only to be impartial, but he ought so to demean himself, both in and out of court, that litigants will have no reason to suspect his impartiality; and that repeatedly failing in that respect constitutes a "high misdemeanor" in regard to his office. If such be considered the result of that case, every one must agree that it established a much needed precedent.

The next great question is:

Can an Officer Be Impeached for Offences Committed Before His Induction into Office?

Those who pin their faith to the argument that the "good behavior" clause in the case of judges, determines the grounds for their impeachment, must logically limit impeachments to a date after that of the official's commission; for by that argument the whole matter is one of implied contract, the officer agreeing by the acceptance of a "good behavior" contract that when he ceases to exercise "good behavior" he may be ousted by impeachment.

The matter is beset with difficulties however it is viewed, but it would seem clear that if the offence is directly connected with the attainment of the office he occupies when impeached, as a violation of the Corrupt Practices Act in relation to his nomination or election, as was alleged in the Sulzer case, the impeach-

[15] 36th Annual Report Am. Bar Assn. 431.
[16] Archbald Impeachment, 888, 889, 892, 906, 915.

ment ought to prevail. So, too, if the offence was the subject of consideration, and the facts in regard to it were substantially known at the time of his election, or appointment and confirmation, it should not again be brought forward. It is within the memory of all of us that a candidate for president was charged with and admitted during the campaign the commission by him of a grave moral offence in his early life, yet, because during the years thereafter, he lived a life "void of offence towards God and towards man," he was wisely elected by the people, and became one of the best of our presidents.

In the Archbald impeachment the question was directly raised, the respondent being charged with offences alleged to have been committed while a District Judge, though at the time of his impeachment he was a Circuit Judge assigned to sit in the Commerce Court. He was acquitted on all such charges, but some of the votes for acquittal were because the offences were not deemed serious enough; some because the Senators were not certain and did not feel it necessary to become certain as to the proper decision of the legal question now being considered, in view of the respondent's conviction on other articles; and some because the Senators did not think he could properly be tried upon such charges. A number of Senators were excused from voting on those articles. The matter cannot be said, therefore, to have been decided in that case. Its importance, and the possibilities rising out of it, was clearly pointed out by Judge Archbald's counsel in their brief, when in speaking of ex-President Taft, and of his manifold public activities, they said:[1]

"The President of the United States at one time held the office of Solicitor General; at another time he was a Circuit Judge of the United States; at another time he was Governor of the Philippine Islands; at another time he was Secretary of War. Is it possible that he can now be the subject of impeachment for any act committed by him at the time he held any one of those offices? If so, he may be removed from his present office as President of the United States by a majority of the House and two-thirds of the Senate for alleged offences charged to have been committed while he held any one of the other positions above mentiond."

[1] Archbald Impeachment, 1104.

And the further importance and possibilities thereof will appear from the statement that a House and Senate could, if there were an antagonistic two-thirds, prevent a president-elect from assuming office, if he were or ever had been a federal official.

In the state impeachments the decisions seem all to be the one way. Judge Barnard was convicted in New York of offences committed during a prior term, after a learned argument citing many precedents.[2] So was Judge Hubbell in Wisconsin.[3] And a number of other instances were given by the Managers in the Archbald case.

Where then should the line be drawn? The Constitution does not draw it, unless it is drawn at the point that the offence must have been committed during the then existing term of office, though it does not directly say so. As in all such matters much must be left to the sound judgment and discretion of the representatives of the people, who presumably will do what is right, moved thereto partially, as both branches of Congress now are, by their direct responsibility to the people. It would be strange indeed, in this day when all men are moving to a higher goal, and when facts are spread nation-wide in a fraction of a day, if the people were to abandon all ideas of right and justice, for prejudice or partisanship or both, and if they do not two-thirds of their representatives never will. Responsibility must always be lodged somewhere, and federal responsibility must be lodged in federal officials. In the past but few, if any, errors have been made in impeachment proceedings of which the respondents could justly complain, and it becomes less likely every decade that such errors will be made in the future. In all human probability the line never will be drawn at any other point than one where the offence is connected with the office; or is so near in point of time to the acceptance of the office, and it is found that the incumbent has shown no "fruits meet for repentence;" that the public good—the vital thing—requires the impeachment. If that be so, how-

[2] Impeachment of Geo. G. Barnard, 147-191.
[3] 16 Law Reporter 601-622.

ever much the accused and his partisans and friends may complain, the citizenship may look on with undisturbed serenity.[4]

This leads us to the last great question:

Can One Be Impeached After He Has Ceased to Be a "Civil Officer of the United States"?

Judge Story was of opinion that this question should be answered in the negative,[1] but the question is by no means so clear as he seems to think. In Blount's Impeachment the question was raised but not decided, he having been expelled by the Senate before impeachment, and the case being decided upon the ground that a Senator is not "a civil officer of the United States" within the impeachment clause, for the reason that by Article I, Section 3, of the Constitution "each house shall be the judge of the election, return and qualification of its own members."

In Belknap's Impeachment the question was raised and perhaps decided, but so decided as not to be of value in future cases, for a majority of the Senate, but less than two-thirds thereof, held that his resignation and the acceptance thereof, after the testimony on the question of his impeachment had all been taken by a committee of the House of Representatives, and but a few hours before the articles of impeachment were actually adopted by the House, was inefficacious. More than one-third of the Senate held, however, that he could not be impeached even under such circumstances, and hence he was acquitted. Whether even a majority would have held him liable had he been out of office before the House began its inquiry, cannot be known. It should be clear, however, that a "race with the law," such as he made, ought not to be successful; and as a practical question it ought to be equally clear that if he is out of office before an investigation into his conduct is asked, and does not afterwards take office, that the pro-

[4] For a very full article, claiming that impeachment will only lie for offences committed while in office, see 23 Yale Law Journal, 60-87.

[1] Story on the Constitution (3rd Ed.) Sec. 790.

ceedings should not be begun. In the cases of Lord Somers, the Earl of Macclesfield, Warren Hastings, Lord Melville, and perhaps in other English Impeachments, the respondents were out of office before the impeachments were begun, but there there are no constitutional provisions on the subject.

The constitutional provisions which are alleged to govern the matter with us are Article I, Section 3, and Article II, Section 4. The first provides:

". . . Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust or profit under the United States. . . ."

And the latter states:

". . . The President, Vice President, and all civil officers of the United States, shall be removed from office on impeachment for, and conviction of treason, bribery, or other high crimes and misdemeanors."

The argument seems to be:

(a) Inasmuch as removal from office is required in case of conviction, and as one not holding office cannot be removed from office, therefore one not holding office cannot be impeached.

(b) Those who can be impeached are "the President, Vice-President and all civil officers," and one not holding office cannot be placed in either class.

That argument, however, is illusory under both heads. Article I, Section 3, is simply a limitation upon the penalty. It is not a designation of the time when an impeachment must be begun. It might just as well be said that because a statute says that punishment of a public official who violates the Corrupt Practices Act shall not extend further than removal from office and fine and imprisonment, that one who resigns his office cannot be tried at all. So also Article II, Section 4, simply says that the officials named "shall be removed" on conviction. It does not say that if they are convicted they may not be otherwise punished, or that by their act of resigning they may escape all punishment. It might just as well be said that as Article II, Section 4, says that they shall be removed upon conviction, that

that meant, as to the officers named, that they could not be disqualified as to future office holding, notwithstanding the provisions of Article I, Section 3. The two constitutional provisions taken together simply mean that, if still holding office, they must be removed upon conviction, and that the limit of punishment beyond that is disqualification for the future. That is the reasonable meaning of the words, and, as already pointed out, that is the rule of construction for the Constitution.

The question is perilously near being simply a moot one. With Congress having more to do than time within which properly to do it, it is not likely that an ex-official will ever be impeached, unless he later accepts a federal office; and it is not likely that he will accept, or having accepted will retain such office, if he knows that he will be impeached. Those who are so much interested in the question as not to be satisfied with the brief statement here made, will find that all that can profitably be said on either side thereof, was said by the Managers and counsel for respondents in Blount's and Belknap's cases.

It is thought that the questions so far considered are the most important that arise in connection with the subject of this discussion. Several others naturally suggest themselves, however, which may well be briefly adverted to.

What Rules Relating to Evidence and the Competency of Witnesses Are Applicable in Impeachment Trials?

Shall the rules of evidence be such as were in force when the Constitution was adopted; or those in force in the District of Columbia, where impeachment is tried; or those in force where the acts complained of occurred? And what shall be done in that regard where the acts complained of occurred in more than one jurisdiction? In view of the fact that the State rules in which a federal district is, are applied in the federal courts, those questions would seem to be quite difficult; and they might be most important, for in some jurisdictions the impeached person and his wife would be excluded from testify-

ing, as would also any person who might succeed the accused in office if he were removed therefrom, as for instance, the Vice-President, on an impeachment of the President. In practice, however, they are not, for the Senate has invariably received all the evidence which it deemed relevant, from any witness who had personal knowledge of the facts, no matter by whom it was to be proved, and left its weight to be determined upon final consideration.

Effect of the Sixth Amendment to the Constitution.

At one time it was very strongly urged that under the Sixth Amendment an impeached person was entitled to a jury trial. That view was urged by Senator Tazewell in the Blount case,—though he did not vote on the question of dismissing the impeachment—and by correspondence and in his speeches. The Amendment provides as follows:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed."

Senator Tazewell's contention, however, never was taken seriously, for the reason that contemporary history shows that the fifth, sixth, and eighth amendments were well known to have been passed to meet complaints, made with great force while the Constitution was under consideration by the various states, that it nowhere provided for jury trials in the ordinary civil and criminal suits, and that, therefore, the people would be worse off in that regard than they were before they threw off the yoke of Great Britain. Those complaints never dealt with impeachments any more than they did with martial law, and hence the amendments were construed to effectuate the purpose intended by them, and were not extended to proceedings never intended to be reached thereby. In one sense impeachment is a "criminal prosecution," but those words as used in the Sixth Amendment evidently refer to ordinary crimes, as does the Fifth Amendment.

Attendance of Senators at the Trial.

Turning from the legal to the practical side of an impeachment trial, the thing that strikes a common law lawyer most is the few Senators who in fact listen to the evidence. During the Archbald Impeachment the membership of the Senate exceeded ninety, yet rarely over twenty members were present. Perhaps a hundred times the members present were privately counted with the result stated. At times some Senator would suggest the absence of a quorum, when the bells would sound throughout the Senate wing of the Capitol, the Senators would troop in and remain long enough to answer to their names, the presiding officer would gravely announce: "On a call of the roll of the Senate fifty-four Senators have responded to their names. A quorum of the Senate is present," and the trial would proceed, though the merest glance around the chamber would show that a quorum of the Senate was not present when the announcement was made. Perhaps the usual twenty or so were at that time increased to thirty or thirty-five, the additional number remaining for a few moments, and then returning from whence they came, leaving the Senate as bare as it had been before. While that result was, and in all such cases must be regretted, yet it is not so much to be wondered at. Most of the work of Congress must now be done by committees, and the Senator who really attends to that work, and is present at the important legislative sessions of the Senate, has all his official time fully occupied. An impeachment trial encroaches very much on that time, and for that reason probably is partly neglected.

Yet certain Senators were always present, and always courteous and considerate, however great the strain upon them and however limited the time at their disposal. It would be discriminatory to name those whom the writer can now recall; but without subjecting himself to that charge, he can say that the presiding officer, Senator Bacon of Georgia, was always present, and that it is a pleasure now to recall, as it was a pleasure then to feel, that he courteously, conscientiously, and fairly ruled every question he was called upon to decide.

Suggestions as to Methods of Obtaining Evidence.

Whether or not the present method of impeachment is continued, it is evident that radical changes ought to be made in the matter of the production of the evidence. With Congress now sitting a large part of the entire year, and with the rapidly growing legislative business of the country, due time cannot be given by the whole Senate to the hearing of the witnesses. In the Archbald Impeachment portions of seven days were taken in preliminary arrangements in the Senate, the trial consumed from December 3rd to December 19th, 1912, inclusive, and from January 3rd to January 8th, 1913, inclusive, and the decision was rendered January 13th, 1913. The Senators could not afford that time and properly attend to their other duties, and the result was, as heretofore stated, but few of the Senators really heard the whole case.

Inasmuch as the method for obtaining the evidence and of hearing the case, is in the exclusive control of the Senate, it is evident that much of the difficulty may be remedied by appropriate rules of procedure. The rules in force at present were adopted many years ago, the latest revision being at the time of the impeachment of President Johnson. So great was the necessity felt for amendment immediately succeeding the Archbald Impeachment, that constitutional amendments were proposed to remedy some of the difficulties again made plain in that trial, as they had been made plain in all the later impeachments. A constitutional amendment, however, is practically impossible of attainment.

But much can be done by a change of the rules. It has not been unknown in the past to have the testimony taken before other than the trying body. In Jefferson's Manual, in referring to impeachments before the House of Lords, it is said:[1]

> "The practice is to swear the witnesses in open House, and then examine them there; or a committee may be named who shall examine them in committee, either on interrogatories agreed on in the House or such as the committee in their discretion shall demand."

An examination of the proceedings in Parliament not only bears

[1] Seld. Jur. 120, 123.

out the foregoing statement, but shows also that the Lords at times decided the case upon the testimony taken for the Commons, or upon that testimony added to by other testimony taken by the Lords.

If the plan of having a committee of the Senate take the testimony were adopted, much time would be saved, except as to the Senators who were members of the committee. But it would not alone give all the relief desired, nor, in the opinion of the writer, is it the best plan within the narrow limits intended to be covered by it. An Act of Congress could be passed which would provide that the testimony should be taken before United States judges within a reasonable distance of the places where the witnesses were, under such regulations as Congress should prescribe, representatives of the House of Representatives, and counsel for the accused, to examine and cross-examine as in other trials, and such testimony to be available both in the preliminary hearing before the House and in the trial before the Senate. Thereby the United States would be saved great expense, the witnesses great inconvenience, the accused great loss, and the Senators much time. In the Swayne Impeachment many of the witnesses were brought from Florida to Washington, and in the Archbald Impeachment they were brought from the Middle District of Pennsylvania. A positive benefit growing out of the course of procedure suggested would be that the rulings on the question of evidence would be more accurate than they now are, for they would be decided by judges accustomed to consider such matters, a point wherein the Law Lords who ruled thereupon in English impeachments had a very decided advantage over our Senators. It is true that there would be a loss in that the Senators would not see the witnesses, as they now may, but generally speaking do not, just as they would not if the evidence were taken by a committee of the Senate; but *salus populi suprema lex.*

Suggestions as to Changes in Procedure.

But even that change would not be adequate, nor by any means all that could be obtained by an amendment of the rules. In the Archbald Impeachment the evidence did not in any

degree controvert the answer of the defendant. In the view which the Senate took of the matter, it could just as well have been heard and decided upon the Articles of Impeachment and the Answer thereto. Yet days were spent in proving only admitted facts. It may be said that if an impeachment is in its nature criminal, and the rule that there can be no crime where there was no intent to do wrong, is to be applied, that the Senate cannot determine whether or not the intent exists if it is averred in the Articles and denied in the Answer, unless evidence is taken from which the intent can be found or negatived. It is a little difficult to see how intent can be extracted from documentary proof, as usually it is, any more than from written answers, unless the weight of the evidence contradicts the one or the other. On the other hand, if the defendant is conclusively presumed to intend the natural consequences of his own acts, evidence will not be required in many cases; and in those instances where the articles and answer leave that matter in doubt evidence can be ordered. In those where no such doubt exists, and they are the more numerous instances, it is a waste of time to take evidence. Moreover, many of the facts now deemed necessary to be proved have no bearing upon the question of intent, as for instance, the status of the respondent, the result of the alleged wrongdoing, *etc.*, yet, under the present practice, they must all be proved—a clear waste of time.

So, too, many of the articles could be decided without taking any evidence, and they may be, and in some cases have been sufficient to impeach and remove from office, yet, under the present practice, the evidence must be heard as to all the articles before a vote can be taken on any. Whatever else may be said as to the impeachment of President Johnson, it was wise to adjourn the Court of Impeachment *sine die* as soon as it was demonstrated, by a vote on certain of the articles, that he could not be successfully impeached upon any. A court might just as well try a man for numerous murders, before executing him for admitted or proven guilt as to one, as to follow the present senatorial practice upon impeachments. Indeed, the Senate might very well, upon a consideration of the articles and answer, hear

and decide one charge alone before taking up any other, when that charge, if proven, would be sufficient to justify both removal and disqualification for the future. In many instances that would be fairer to the accused, who may be condemned on one article because of evidence not fairly applicable thereto, and not admitted because thereof. And it would leave him something to live on after his trial, instead of pushing him to the edge of bankruptcy as now.

Enough has been said upon this point to satisfy the most skeptical that modern methods call for a radical amendment of the procedure in cases of impeachment. The length to which this article has gone suggests, however, that it would be wiser, instead of going into greater details, to give in the Appendix the suggested new rules. It is accordingly so done.

Is Impeachment an Adequate Remedy?

This is the really great and important question in all this controversy. As a practical matter, while there are many thousands of federal officers subject thereto, the cumbrous nature of the remedy limits it to the great officers of state. The decision in the Blount case resulted, and wisely so, in holding that Congressmen are not subject thereto. The power of the President to remove, and the great improbability that he will retain in office those wholly unfitted to perform the duties thereof, has resulted, with one exception, in the exclusion of his official family from actual impeachment. Notwithstanding that fact, it would be exceedingly unwise to relieve them from subjection thereto, for it is quite within the realm of possibility that the day may come when even a President will care less for the nation's good, than he does for the fulfillment of his then present desires. Happily none such has yet appeared.

Judging by the past, however, impeachment as a practical remedy applies only to the judges. Of the previous impeachments one was of a President, one was of a Senator, one was of a Secretary of War, and the other six were of judges. Inasmuch as the Senate held in the Belknap case, and also, though not so clearly, in the Archald case, that impeachments were in-

tended to reach only those then actually in office at the time of impeachment, it is reasonably certain that in future impeachments the cases of judges will be relatively more numerous than as above, for all other offices have but a brief tenure.

It is also reasonably certain, though most of the federal judges have been very satisfactory officials, that the public good would have been better conserved if a much greater number thereof had made way for others better qualified by learning, or more fitted by temperament, to fill the office. The cumbersome, expensive, and uncertain nature of the remedy by impeachment; the dislike to put so serious a stigma upon a judge; the reasonable certainty that other influences than either the public good or the law of the land would operate to affect the decision; the uncertainty of the offences which are impeachable offences; all operate to prevent calling the judge to account in this way.

While it is important, never more so than now, that the tenure of the judges should be stable, it is only so important *quoad* the public because the public good requires it. The good to the individual judge, while quite important to him personally, becomes so to the public only because of and only so far as it is bound up in the public good. The moment that stable tenure is given more weight than the public good requires, that moment it becomes a public injury. Every lawyer and many laymen can recall instances of judges who by reason of lack of learning or because of unjudicial temperament, for the public's sake, should have been removed from office, but who had not been guilty of "treason, bribery or other high crimes and misdemeanors," no matter how liberally you construe the "good behavior" clause of their commissions. Out of this fact has grown the clamor for the recall of judges, against which thinking lawyers ever have and ever should show an unyielding front. The objection of incompetency and unbecoming conduct unhappily found to exist in a few of the judges, is the substance of the complaint against the judiciary, and like everything else substantial it casts a shadow when the sun shines athwart it. Let us be careful, now that the sun of public opinion is shining athwart the judiciary, that in a vain endeavor to save the

shadow we do not endanger the substance. An independent judiciary is indispensable; but that furnishes no reason for preserving incompetent judges, whether they be mentally, morally, or constitutionally unfit.

It is evident, however, that it would be unwise to submit judges to impeachment and removal upon such uncertain charges as would have to be made to cover the grounds above referred to, because the very uncertainty of the definition of the offences covered by the power of removal would be an invitation to view the matter from the political rather than the public standpoint. This thought points out one of the reasons strongly urged against the power of impeachment as it now exists, a reason that sometimes, but happily rarely, has found exemplification in the trials heretofore held.

It is not to be lost sight of that the judicial department was intended to be not only a co-ordinate but also an independent branch of the government, as far removed as possible from the control of the other branches; and that impeachment of judicial officers by Congress was only permitted because no other or better way of protecting the public from the derelictions of their judges had been devised. That method, however, at once pitchforks the accused judge into the political arena, and invites him to seek favors from members of the House and Senate, when he should, so far as possible, be removed from even the temptation to ask favors from any one, and particularly from political public officials. And it invites him also to seek the influence of the President and other high officials of the executive department upon Senators and Representatives, to avoid or restrain contemplated action against him. This not only operates to defeat the intention of keeping the great departments separate and distinct from each other, but it also tends to destroy the fearlessness and independence of the individual judge.

It is evident, therefore, that any plan for the removal of incompetent judges which reduces to a minimum the influence of the legislative and executive departments of the government upon the judiciary, will be a benefit to the public, if it adequately protects the public from the continuance in office of those who

are unfitted therefor. Can such a plan be devised? And if so, will it require a constitutional amendment to make it effective?

It is evident that if there is vested in some judicial tribunal an effective supervision over the other federal judges, resulting in the removal of the latter in case they do not properly fulfill their duties, not only will there be a greater freedom in the judges, but there will also be a judicial determination of the questions at issue, and a greater benefit to the public because more unfit persons can be removed than by the present system. The trial of a District Judge by the appropriate Circuit Court of Appeals, preferably of another circuit, and of all other judges by the Supreme Court itself, would furnish judicial tribunals to try all but Supreme Court judges. It might be provided that the latter should be tried by judges of the inferior courts, but this would infringe upon the dignity of the Supreme Court, and would also subject the trying judges to a stress because they were sitting in judgment upon one who theretofore had and who thereafter might sit in judgment upon them and their rulings. It would seem better, therefore, that the remedy by impeachment should remain as it is for the Supreme Court judges, a remedy which will probably never again be applied to a member of that court. The plan suggested, however, would reach nearly all the judges.

Can it be obtained without a constitutional amendment? The tenure of the judges is "during good behavior." Nowhere is it stated what constitutes "good behavior," unless the impeachment clause is to be read not only as defining those words, but as supplying also an exclusive remedy in case of an alleged breach of duty. Article II, Section 3, of the Constitution simply says:

> "The President, Vice President and all civil officers of the United States shall be removed from office, on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors."

But there is no provision that that shall be the only method of removal. Article III, Section 1, says, *inter alia:*

> "The judges, both of the supreme and inferior courts, shall hold their offices during good behavior." . . .

But it is nowhere said how that "good behavior" is to be ascer-

tained, and the tenure determined if it does not exist. Article I, Section 8, says, *inter alia:*

"The congress shall have power . . . to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in the government of the United States, or in any department or officer thereof."

It would seem that under the latter clause Congress would have power to define what constitutes "good behavior," and to provide a method for ascertaining whether or not the judges are complying with the tenure under which they hold, and to cause them to forfeit their offices if they are not, subject, of course, to a review by the courts of the question as to whether or not the definition wholly or partially is within the meaning of those words as used in the Constitution. By this method the question becomes a judicial one, as it should be, and the accused judge will be safeguarded in his right to hold his office exactly as he is safeguarded in all the other rights vested in him by the Constitution. That Congress has the power claimed was expressly asserted by Senator Catron in the Archbald Impeachment.[1]

It may be said that the course suggested would result in removing the judges still farther from contact with the people. But this can hardly be so. They do not come into contact with the people when they are impeached, and experience has shown that the judiciary is less subject to improper influences than any other branch of the government, whether by brother judges or otherwise. It follows that both the public and the accused would be better protected by the suggested than by the existing remedy. There is no reason to suppose that the Supreme Court judges would deal too leniently with derelict judges of the inferior courts. On the contrary, that just pride which they have ever had in maintaining the high standing of the judicial department would operate to counteract any of the influences of association, even if such there were. Moreover, there would be grounds for

[1] 2 Proceedings, *etc.*, on the Trial and Impeachment of Robert W. Archbald, 1661.

removal not now existing, and derelict judges have greater spheres of influence with political officers than they have with judicial.

It is not the writer's purpose to state all the things which would constitute bad behavior, nor is it intended hereby to specify the best method for ascertaining the fact of bad behavior, or of carrying into effect the judgment if and when ascertained. It may not be inappropriate, however, to quote from an address of Mr. Justice Samuel F. Miller before the New York State Bar Association, where in discussing the subject of impeachment he said:[2]

"It is not easy to suggest a better remedy. The tribunal would be rendered more efficient and more safe by a specific defintion of the causes of removal. There are many matters which ought to be causes of removal that are neither treason, bribery, nor high crimes and misdemeanors. Physical infirmities for which a man is not to blame, but which may wholly unfit him for judicial duty, are of this class. Deafness, loss of sight, the decay of the faculties by reason of age, insanity, prostration by disease from which there is no hope of recovery—these should all be reasons for removal, rather than that the administration of justice should be obstructed or indefinitely suspended.

"So, also, there are offences against the law, or conduct, which might be made so, that peculiarly unfit the man for the office of judge. A vile and overbearing temper becomes sometimes, in one long accustomed to the exercise of power, unendurable to those who are subjected to its humors. But I think the experience of observers will bear me out in saying, that habitual intoxication is of all this class of disqualifications, the most frequent.

"Two things may be suggested as worthy of consideration in any effort to amend the Constitution on this subject, namely: That the causes for which a judge may be removed from office shall be described with the same precision as that which is used in defining indictable offences. Second, that whatever may be the nature of the court before which he is tried, the fact of his guilt of the impeachable offence, or disqualification charged, should be found by a jury or similar tribunal. It is, however, to be remembered that a judge should, in the exercise of his functions, be tramelled as little as possible by fear of consequences to himself, and in view of the resentments of disappointed suitors the provision for removal should not be made too easy."

[2] 2nd Annual Report, p. 40.

And it may not be unimportant to note that

"In England the Lord Chancellor, or the Chancellor of the Duchy of Lancaster, within their several jurisdictions, have power to remove any county judge for either 'inability or misbehavior.' No farce of an impeachment is required or allowed. A great and perhaps somewhat arbitrary power is entrusted to a great functionary, upon the faith of its judicious exercise, under the corrective influence of public opinion, and the system has not been found unsatisfactory."[3]

It may well be thought that vesting so much power in one man, and the summary method provided, are alike too undemocratic for our form of government; but it would not be difficult to draft an act defining "good behavior" and providing for a trial by or under the control of the Supreme Court, by which both of these objections would be obviated, and those who had demonstrated their inability properly to perform the duties of their offices could be removed therefrom though not guilty of "treason, bribery or other high crimes and misdemeanors." "Good behavior" means good behavior in or as affecting the office, and a course of conduct which brings the office into disgrace or contempt is, therefore, a violation of the good behavior tenure of the incumbent. An act such as suggested would, therefore, tend to render the judiciary independent of the other great departments of the government, would answer the arguments of those who contend that the judges should be more responsible to the public will, and would greatly strengthen the judicial system generally.

Alex. Simpson, Jr.

[3] 6 Solicitor's Journal and Reporter, 804-805.

Appendix.

English Impeachment Trials.

In Sir James Fitzjames Stephens' "History of the Criminal Law of England," page 159, he gives what purports to be a complete list of the impeachment trials in that country. It is alike incomplete and inaccurate; incomplete in that there are many more than those given by him; inaccurate in that a number are stated by him as impeachment trials which were not in fact so.

Some of the impeachments hereinafter abstracted, are not impeachments in the modern understanding of that term; but inasmuch as they are alleged to be impeachments by Stephens and others, and illustrate some of the points made in the foregoing paper, and are of great historical interest, they also are abstracted.

It is not attempted herein to set forth the whole of the articles of impeachment in the particular cases, but only to give the material parts thereof, avoiding repetitions and omitting the evidence often stated in the complete articles. Inasmuch as treason is defined in the Constitution of the United States, and bribery is a well known crime, not needing the English Impeachment Trials to aid in understanding it, the articles of impeachment, where those crimes only are charged, are not herein abstracted, though many of the impeachments for treason are for matters which the wildest imagination would not now consider treasonable. All the cases, however, are cited and the result thereof stated.

IMPEACHMENT OF DAVID, THE BROTHER OF LLEWELLYN, 1 Stephens' History of the Criminal Law of England 146 (1283).

Charge: Treason.

The trial took place at Shrewsbury at a sort of parliament which met September 30, 1283.

"The Sheriff of each county was to return two elected knights, and the governing bodies of twenty cities and boroughs were to return two representatives for each. Eleven earls, ninety-nine barons, and nineteen other men of note, judges, councillors, and constables of castles, were summoned by special writ. At Shrewsbury accordingly David was tried, condemned, and executed; his judges were a body chosen from the justices of the Curia Regis under John de Vaux; the assembled baronage watched the trial as his

peers, and the commons must be supposed to have given a moral weight to the proceedings."

IMPEACHMENT OF THOMAS, EARL OF LANCASTER *ET AL.*, 1 Howell's State Trials 40 (1322).

Charge: Treason.

This impeachment, which included also the impeachment of twelve barons, was tried before the king only. The defendants were convicted and executed.

In 1327 the judgment against the Earl of Lancaster was reversed in the first parliament of Edward 3rd.

IMPEACHMENT OF ROGER MORTIMER, EARL OF MARCH, 1 Howell's State Trials 51; 1 Cobbett's Parliamentary History of England 84 (1330).

Charge: "These are the Treasons, Felonies, and Mischiefs done to our lord the king and his people by Roger Mortimer and others of his company."

1st. "Whereas in the parliament holden at Westminster next after the king's coronation, it was ordained that four bishops, four earls and six barons should remain with the king to advise him, and that four should still be with him, namely, one bishop, one earl and two barons at least, and that no great business should be done without their assent." Yet the defendant "not having regard to the said assent usurped to himself royal power and the government of the realm above the state of the king, and put out and placed officers in the king's house and otherwise throughout the kingdom . . . so as he was encompassed by his enemies, that he could do nothing as he would but only as a man under guard and restraint."

2nd. "Whereas the king's father was a Kenilworth by order and assent of the peers of the land . . . the said Roger by his usurped power, which he exercised over him at his pleasure, ordered that he should be sent to Berkeley Castle, where, by him and his confederates, he was traitorously, feloniously and falsely murdered and killed."

3rd. "The said Roger, by his usurped royal power, forbad by the king's writ under the great seal, that any should come to the parliament at Salisbury with force and arms, under pain of forfeiting whatever they had to the king; yet thither he came with others of his party with force of arms to the said parliament, contrary to the prohibition aforesaid, wherefore divers peers of the land . . . knowing the manner of his coming would not be there." Whereupon he "threatened them with life and member, if any of them should be so hardy as to speak

or do anything contrary to his pleasure in any point. And in the same parliament, by the same usurped power, he caused the king to make him Earl of March, and to give him and his heirs several lands in disherison of the crown. And afterwards the said Roger, and those of his party, led the king armed against the . . . peers of the land . . . when they were going to the parliament at Salisbury, so that . . . out of regard to the king, they departed and went toward their own countries, grieving that they could not speak with, or advise with their liege lord as they ought to do."

4th. "The said Roger by the said usurped power, caused the king to march forcibly against the . . . peers of the land, who were appointed to be with the king, to advise him; and so prosecuted them with force that they . . . submitted to the king's grace saving to them life and member, and that they might not be disinherited nor have too great a fine set upon them; yet he caused them to be fined so grievously, that half their lands, if sold outright, would only pay it; and others he caused to be driven out of the nation, and their lands to be seized, against the form of the Great Charter and law of the land."

5th. That knowing the king's father was dead he "in deceivable manner, informed the Earl of Kent that he was alive; wherefore the earl being desirous to know whether it was so or not, used all the good ways he could to discover the truth, and so long, till the said Roger by his usurped royal power, caused him to be apprehended in the parliament holden at Westminster and so pursued him, as in that parliament he procured his death."

6th. "The said Roger by his usurped royal power, caused the king to give to him and his children, and confederates, castles, towns, manors and franchises in England, Ireland and Wales, in decrease of the revenues of the crown."

7th. "The said Roger in deceivable manner caused the knights of shires, at the parliament at Winchester, to grant to the king one man-at-arms out of every town in England . . . to serve at their own cost, for a year in his war in Gascoigne, which charge he contrived for the advantage of himself and party, in destruction of the people."

8th. "The said Roger, by his usurped royal power, caused summons to be sent to many great knights and others that they should come to the king; . . . and when they came he caused them to be charged to prepare themselves to go into Gascoigne, or fine at his pleasure; which fines were for the benefit of him and his party."

9th. "The said Roger falsely and maliciously made discord between the king's father and his queen; and possessed her, that if she went to him she would certainly be killed . . . and by this way, and his other subtleties he so ordered it, that she would not come to her liege lord and king, to the great dishonour of her son and self, and great damage to the whole realm perchance in time to come, which God forbid."

10th. "The said Roger by his said usurped royal power, had caused to be taken for him and his party, the king's treasure, as much as he pleased, without tale, in money and jewels, in destruction of the king, so that he had not wherewithal to pay for his victuals."

11th. "The said Roger, by the said usurped power, caused to be shared between him and his confederates the 20,000 marks, which came out of Scotland, for the articles of peace, without anything being received by the king."

12th. "The said Roger, by his above mentioned royal power, received the king's duties and purveyance through the kingdom, as if he had been king; and he and his party had with them double the company of men and horse that were with the king, in destruction of the people, not paying for their quarters any more than they themselves pleased."

13th. "The said Roger, by his said royal power caused the king to agree to the mounting of 200 Irish chevaliers, or horse, being of those that killed the great men of Ireland and others, who were in the king's faith; whereas the king ought immediately to have revenged their deaths, rather than pardoned them, contrary to the statute and assent of parliament."

14th. "The said Roger contrived to have destroyed the king's secret friends, in whom he had most confidence; and he surmised to the king, . . . that his said secret friends had excited him to combine with his (the said Roger's) enemies beyond sea, in destruction to the queen his mother, and of him the said Roger; and this he affirmed so impudently to the king, that he could not be believed against what he had said."

"And for these things and many others not as yet fit to be declared . . . the king charged the earls and barons, the peers in the land, . . . to do right and true judgment upon him for the crimes above written, as being notorious and known to be true, to themselves, and all the people of the kingdom."

He was convicted by the lords without a hearing and was condemned to be executed.

By act of Parliament of 28th Edward 3rd, the judgment was reversed as erroneous, and his grandchild Roger restored to his title and estates.

IMPEACHMENT OF SIMON DE BERESFORD, 1 Howell's State Trials 54 (1330).

Charge: Aiding in the treason of the Earl of March.

The charge was made by the king. The lords at first protested that they ought not to try him as he was not a peer, but afterwards yielded the point, and he was convicted and executed.

IMPEACHMENT OF THOMAS DE BARCLAY, LORD CHIEF JUSTICE OF THE COURT OF COMMON PLEAS, Hale's Jurisdiction of Parliament 91 (1350).

Charge: Treason.

"He was tried by twelve knights and esquires of the county of Gloucester in *pleno parliamento* at the Lord's bar, and by them he was acquitted; the only precedent that I ever saw of a trial of a peer by other than his peers, and that by a jury appearing at the Lord's bar in parliament."

IMPEACHMENT OF RICHARD LYONS *ET AL.*, 4 Hatsell's Precedents 50 (1376).

Charge: "For certain misdemeanors in removing the staple of wool and other merchandize from Calais; in lending money to the king upon usurious contracts; and in bargaining with the king's creditors to take off the sum due to them upon a small advance; and for many other extortions, deceits and oppressions, by the said Richard Lyons, as farmer of the subsidies and customs."

He was convicted and "committed to prison, during the king's pleasure, and adjudged to pay a fine, to be disfranchised in the city of London, never to hold any office under the king, nor to approach his council or court."

IMPEACHMENT OF WILLIAM LORD LATIMER, WILLIAM ELLIS *ET AL.*, 4 Hatsell's Precedents 51 (1376).

Charge: Divers deceits (not stated).

They were convicted, "committed to prison, and to pay a fine at the King's pleasure" and upon application of the Commons to the King, Lord Latimer was "ousted of all his offices, and be never of the King's council."

IMPEACHMENT OF ALICE PERRERS, 4 Hatsell's Precedents 67 (1377).

Charge: "Alice Perrers, who had been mistress to the old King, Edward III, was charged before the lords (by Sir Richard Scroop, Steward of the King's Household) of having incurred the penalties of forfeiture and banishment, inflicted by an ordinance made in Parliament in the 50th year of the late King,

against such women, and particularly against her the said Alice Perrers, as should, by way of maintenance, pursue matters and suits in the King's Courts."

She was convicted and "banished out of the kingdom, and her lands, chattels, tenements, and possessions seized and forfeited to the king."

IMPEACHMENT OF JOHN DE GOMERIES AND WILLIAM WESTON, Hale's Jurisdiction of Parliament 92 (1383).

Charge: Treason.

They were found guilty, but the record does not disclose the sentence imposed.

IMPEACHMENT OF ALEXANDER NEVIL, ARCHBISHOP OF YORK; ROBERT VERE, DUKE OF IRELAND; MICHAEL DE LA POLE, EARL OF SUFFOLK AND CHANCELLOR OF ENGLAND; ROBERT TRESILIAN, LORD CHIEF JUSTICE OF ENGLAND; AND NICHOLAS BRAMBRE, SOMETIME MAYOR OF LONDON, AND OTHERS, 1 Howell's State Trials 89; 1 Cobb. Parl. Hist. 188; 1 Emlyn's State Trials 1; Salmon's Abridgment of State Trials 1 (1386).

The Earl of Suffolk was dismissed from his Chancellorship, and immediately afterwards was impeached by the Commons for High Crimes and Misdemeanors.

1st. "That the said Earl of Suffolk being Chancellor of England . . . purchased of our lord the king lands, tenements and rents to a great value . . . at a much smaller value than really they were worth by the year, in deceit of the king."

2nd. That he promised in full parliament to assist in the improvement of the realm "yet it was not done, and that by default of him who was the principal officer or minister."

3rd. That when parliament granted a tax to be expended in a specific manner in guarding the sea "as it was ordered to have been" yet it was not so expended "whereas many mischiefs have already happened, and more are like to enure for the realm, and all this by the default of the said Lord Chancellor."

4th. That he purchased a forfeited annual grant or "gift of £50 per annum" payable "out of the Customs of Kingston upon Hull . . . and prevailed with the king to confirm the said purchase, whereas the king ought to have had the whole profit."

5th. That he took to himself revenues which temporarily should have gone to the king, and when the real owner claimed

them, "he could not obtain the same till he and two persons with him became bound by recognizance . . . to pay yearly to the said Chancellor and his son John £100 per annum for the term of their two lives."

6th. That "there was made and sealed a charter of certain franchises granted to the castle of Dover in disherison of the crown and to the subversion of the pleas and courts of the king and of his laws."

7th. That he failed to use a fund granted by parliament for the relief of the city of Gaunt, so that "the said city of Gaunt was lost, and also a thousand marks of the said money."

He was found guilty upon certain of the articles and was fined, imprisoned, "and all his lands, which were of no small revenue, confiscated."

Later on articles were presented against all of the defendants charging them with treason, the 39 articles regarding which, for reasons heretofore stated, are not herein abstracted. The king preferred the charges (Stephens' History of the Criminal Law of England, 153):

"to the judges, serjeants, and other sages of the law of the realm (i. e., of the common law), and also to the sages of the civil law, who were charged by the king to give their opinion to the Lords of Parliament, to proceed duly in the cause of the said appeal. The said judges, serjeants, and sages of the common law and also of the civil law took the matter into consideration, and avowed to the Lords of Parliament that they had seen and heard the tenor of the appeal, and that it was not made according to the requisitions of either law. Upon which the Lords of Parliament considered the matter, and with the assent of the king, and by their common assent, it was declared that in so high a crime as is alleged in this appeal which touches the person of our lord the king and the state of his whole realm, and which is said to be committed by peers of the realm and others, the cause must not be decided elsewhere than in Parliament, nor by any other law than the law and course of Parliament and that it appertains to the Lords of Parliament and to their franchise and liberty by the ancient custom of Parliament to be judges in such cases, and to adjudge them with the king's assent."

The respondents defaulted, and were held guilty of the 1st, 2nd, 11th, 12th, 15th, 17th, 18th, 29th, 30th, 31st, 32nd, 37th, 38th and 39th articles, each of which charged treason, *"and that they were also culpable of all the rest of the articles contained in the said appeal not yet declared treason."*

They were sentenced to be executed, and all their property forfeited to the king.

IMPEACHMENT OF THE JUDGES: ROBERT BELKNAP, JOHN HOLT, ROGER FULTHROPE, WILLIAM BURLEIGH, JOHN CAREY AND JOHN LOCKTON, 1 Howell's State Trials 119 (1388).

Charge: Treason.

The allegation was that they answered certain questions submitted to them as judges, wrongfully. They replied that they did so, in fear of their lives, at the king's command.

They were convicted and sentenced to be executed, but the sentence was commuted to banishment to Ireland.

IMPEACHMENT OF JOHN BLAKE AND THOMAS USKE, 1 Howell's State Trials 120 (1388).

Charge: Treason.

The allegation was that as counsel for the king they drew up the questions referred to in the last preceding impeachment. Each of them answered

"That he was retained of counsel for the king, by his command, and sworn to keep secret his advice, and whatever he did, it was by the king's command, whom he ought to obey."

It was held that:

"Whereas they alleged for their excuse the king's command, it made the crime the greater."

They were convicted, sentenced, executed, and their property forfeited to the king.

IMPEACHMENT OF THOMAS, BISHOP OF CHICHESTER, 1 Howell's State Trials 121 (1388).

Charge: Treason.

He was convicted and sentenced to be executed, but his sentence was commuted to banishment to Cork, Ireland.

IMPEACHMENT OF SIMON DE BURLEIGH, JOHN DE BEAUCHAMP, JAMES BAROVERSE, AND JOHN SALISBURY, 1 Howell's State Trials 121 (1388).

Charge: Treason.

They were convicted and executed.

IMPEACHMENT OF SIR JOHN COBHAM, 4 Hatsell's Precedents 58 (1397).

Charge: Crimes and Misdemeanors.

In "the issuing of a Commission, by virtue of which several persons had been tried and executed."

He was convicted and sentenced "that he should be drawn, hanged, beheaded and quartered; and that all his manors, lands,

tenements, &c., should be forfeited to the king." So far as his life was concerned, he was reprieved on condition "that he should remain in perpetual prison on the Isle of Jersey for his life."

IMPEACHMENT OF THOMAS FITZ-ALAN, ARCHBISHOP OF CANTERBURY, 1 Howell's State Trials 124 (1397).

Charge: High Treason.

For advising the issuance of a commission "directed to Thomas, Duke of Gloucester; Richard, Earl of Arundel, and others in the 10th of his majesty's reign, and made and procured himself as chief officer to be put into it, and have power with the other commissioners to see it put in execution, which commission was made in prejudice to the king, and openly against his royalty, crown and dignity."

The king reported that the archbishop had confessed his error, put himself upon the king's grace and was banished.

IMPEACHMENT OF THOMAS, DUKE OF GLOUCESTER; RICHARD, EARL OF ARUNDEL; THOMAS, EARL OF WARWICK; THOMAS MORTIMER AND SIR JOHN COBHAM, 1 Howell's State Trials 126; 1 Cobb. Parl. Hist. 226 (1397).

Charge: High Treason.

The articles were by way of bill directed to the king in parliament, charging that the respondents said to the king that he would be in danger of his life unless he would consent to make to them, and others whom they should name, a commission whereby they might have the government in their own hands.

"The commons appeared before the king in parliament and affirmed the said appeals to be all good and lawful."

The respondents were convicted, as well those dead as those living. Some were executed, some had their estates forfeited, and one was pardoned.

IMPEACHMENT OF RICHARD II, 1 Howell's State Trials 135; 1 Cobb. Parl. Hist. 254 (1399).

Charge: No general words are used to designate the charges.

Though called an impeachment by Cobbett, this was not one in fact. The king having renounced the crown it was deemed by Parliament that

"'it would be very expedient and profitable to the kingdom, for the removing of all scruples, and taking away sinister suspicions,' that

very many crimes and defects, by the said king about the ill-governance of his kingdom very often committed, (should be) reduced into writing by way of articles, by reason of which, as himself affirmed in the Cession by him made, he was deservedly to be deposed, should be publicly read and declared to the people."

Thereupon 33 articles were read, and judgment was entered

"that these causes of crimes and defaults were sufficient and notorious to depose the said king; considering also his own confession of his insufficiency, and other things contained in his said renunciation and cession, openly delivered; all the said states did unanimously consent, that *ex abundanti* they should proceed unto a deposition of the said king; for the greater security and tranquility of the people, and benefit of the king."

He was thereupon formally deposed, and it was further decided by the lords

"that it seemed advisable to them, that he should be put under a safe and secret guard, and in such a place where no concourse of people might resort to him; and that he be guarded by trusty and sufficient persons, and that no person who had been familiar with him, should be about his person, and that it should be done in the most secret manner that can be devised."

In the House of Lords, the Bishop of Carlisle alone spoke against that order. No one else spoke or voted against it.

IMPEACHMENT OF HENRY, BISHOP OF WINCHESTER, 1 Cobb. Parl. Hist. 356 (1428).

Charge: No general words are used to designate the charges.

This also was not an impeachment, though so called by Cobbett. It consisted of six "Articles of Accusation" made against the Bishop by the Duke of Gloucester, which were answered by him, and

"the further examination of it was by the house devolved upon a select number of lords, who having thoroughly examined all matters, acquitted the bishop and by a formal award enjoined them to be firm friends for the future; and by such inducements wrought upon them, that they shook hands, which gave a mighty satisfaction to all people, both of the clergy and laity. And the king, by the advice of his council, made a magnificent feast at Whitsuntide, to rejoice for this happy reconciliation."

IMPEACHMENT OF WILLIAM DE LA POLE, DUKE OF SUFFOLK, 1 Howell's State Trials 272 (1450).

Charge: High Treason.

He admitted certain of the articles and denied others, and threw himself upon the king's mercy, whereupon the king banished him from the realm for five years.

IMPEACHMENT OF SIR WILLIAM STANLEY, 1 Howell's State Trials 277 (1494).

Charge: High Treason.

He was tried, convicted and executed.

IMPEACHMENT OF CARDINAL WOLSEY, 1 Howell's State Trials 367; 1 Cobb. Parl. Hist. 492 (1529).

Charge: High Treason.

The charges were prepared by a number of the Lords, sent to the king, and then to the Commons, but the cardinal's secretary, Cromwell, so well represented him at the bar of the Commons that he was acquitted without trial.

IMPEACHMENT OF SIR THOMAS SEYMOUR, LORD SEYMOUR OF SUDLEY AND LORD HIGH ADMIRAL OF ENGLAND, 1 Howell's State Trials 484; 7 Emlyn's State Trials 1; Salmon's Abridgment of State Trials 11 (1549).

Charge: High Treason.

Formal articles were presented against him, but he was never tried, because in the meantime he was attainted, convicted and executed.

IMPEACHMENT OF LORD CHANCELLOR BACON, 2 Howell's State Trials 1088; 1 Cobb. Parl. Hist. 1239; 1 Emlyn's State Trials 375; Salmon's Abridgment of State Trials 73 (1620).

Charge: Bribery and Corruption.

There were 28 separate articles, each charging a different bribery.

The Lord Chancellor replied:

"I do plainly and ingenuously confess that I am guilty of corruption, and do renounce all defence, and put myself on the grace and mercy of your lordships."

He afterwards, upon being required so to do, answered each article separately.

The judgment was that he be fined £40,000; imprisoned in the Tower during the king's pleasure; perpetually incapacitated from holding any office, place or employment in the state or commonwealth; and debarred from sitting in parliament or coming within the verge of the court.

IMPEACHMENT OF THEOPHILUS FIELD, BISHOP OF LLANDAFF, 2 Howell's State Trials 1088 (1620).

Charge: Bribery.

No formal articles were presented, but the Commons sent

to the Lords certain testimony taken by the Commons. The Lords then examined one of the principal witnesses anew, and his testimony being contradictory of that given to the Commons, the Lords made report thereof to the Commons, which thanked the Lords "for their lordships' honorable and just proceedings in the cause," and "thus ended the affair."

IMPEACHMENT OF SIR GILES MOMPESSON, 2 Howell's State Trials 1120 (1620).

Charge: Being a Monopolist and Patentee.

He fled, and hence the details of his offences are not given in the report, but they were evidently the same as the charges against Sir Francis Michell, whose trial immediately follows this.

He was found guilty, degraded from knighthood, outlawed, declared incapable of testifying in court, excepted out of all general pardons, liable to be imprisoned for life, forbidden to approach within twelve miles of the courts of the king, the profits of his lands forfeited to the king for life, and his goods and chattels absolutely, fined £10,000, disabled from holding office, and declared to be forever an infamous person.

IMPEACHMENT OF SIR FRANCIS MICHELL, 2 Howell's State Trials 1132 (1621).

Charge: Being a Monopolist and Patentee.

1st. "That he received an annuity of £100 per annum (to be continued for five years) for executing the Commission concerning Gold and Silver thread."

2nd. That "he and Henry Tweedy took upon them the execution of the first Commission touching Gold and Silver thread, . . . and abused their power by committing divers to prison before conviction, and by committing divers to prison for refusal to enter into bond required by them; which was not then warranted by the Commission."

3rd. "That, there being a second Commission, touching Gold and Silver thread, . . . he alone committed divers to prison; the authority being unto two."

4th. "That he erected an Office, kept a Court, made Officers and divers unwarrantable Orders, and exacted bonds for the observance of the same."

5th. "That in the suit brought by Fowles, in the Star-chamber, against Francis Lake and others, he took of Francis Lake 22 shilling pieces to compound the same."

He was found guilty, degraded from knighthood, impris-

oned during the king's pleasure, fined £1000 and disabled from holding any office under the king or for the commonwealth.

IMPEACHMENT OF SIR HENRY YELVERTON, ATTORNEY GENERAL, 2 Howell's State Trials 1136; 1 Cobb. Parl. Hist. 1232 (1621).

Charge: High Crimes and Misdemeanors.

1st. "That he committed divers persons for refusing to enter into bonds to restrain their own trades, etc., before he had any authority to require any such bonds."

2nd. "That he first signed and directed the warrants, dormant, having no authority for the same, and yet containing many unwarrantable clauses."

3rd. "That he advised the patent of Gold and Silver Thread to be resumed into the king's hands, conceiving the same to be a monopoly; and advised the patentees to proceed by contract with the king."

4th. "That he procured a proclamation to take bonds, and signed a docquet, showing his advising with the Recorder of London and the city thereupon, whereas the recorder was not acquainted with it."

5th. "That 3401 *quo warranto's*, to the vexation of the people, were bought by him, touching the patent of Inns, and but two came to trial."

6th. "That he commenced divers suits in the exchequer, touching Gold and Silver Thread; but did not prosecute the same."

Answers were filed which were adjudged scandalous by the king. He was found guilty, and fined 10,000 marks, adjudged to be imprisoned in the Tower during the king's pleasure, and directed to acknowledge his fault and make submission to the king at the bar of the Lords.

IMPEACHMENT OF THE BISHOP OF NORWICH, 1 Cobb. Parl. Hist. 1478 (1624).

Charges: Misdemeanors in his Episcopal Office.

1st. "That he inhibited or disheartened preachers on the Sabbath day in the forenoon."

2nd. "That images were set up in the churches, and one of the Holy Ghost fluttering over the font; that a marble tomb was pulled down, and images set up in its room, and the bishop blessed them that did it."

3rd. "That he punished those who prayed not towards the east."

4th. "That he punished a minister for catechizing his family, and singing of psalms."

5th. "That he used extortion many ways."

6th. "That he did not enter institutions to the prejudice of patrons."

Answers were filed.

"Immediately after which an Order is entered on the Lords Journals, that in respect to the shortness of time and the multiplicity of business, now depending to be determined, the Complaint of the Commons, against the bishop of Norwich, shall be referred to the High Commissioners, to be examined by them; and they to make report to the house, and then the house will judge of it."

"But we hear no more of this, or the former affair, in the journals or elsewhere."

IMPEACHMENT OF THE LORD TREASURER MIDDLESEX, 2 Howell's State Trials 1184; 1 Cobb. Parl. Hist. 1411 (1624).

Charge: High Crimes and Misdemeanors.

It is impossible to abstract the charges from the report, but they may be said to be

1st. Bribery in a number of instances which were stated.

2nd. "He undertook the office of the Wardrobe . . . and obtained a certain assignment of £20,000 per annum or thereabouts, which was duly paid unto him by way of impost. Instead of doing service he . . . hath procured gifts and discharges of great sums of money which he received for the execution of that place and for the queen's funeral."

3rd. That he refused to pay to merchants importing sugar "the imposts paid on importation; which is contrary to the direction given by his majesty's letters patent."

4th. That he caused the surrender of a preceding lease, and took a new lease "from the king unto Nicholas Harman and Tho. Catchmay (two of his servants) unto his own use, at £2000 per annum and lets the same unto the farmers at £6000 per annum."

5th. That though the composition for purveyance of grocery had been compounded "the Lord Treasurer directed his servants to levy this composition; and although it was not due to the king, nor any such composition entered in the computing house, his lordship commanded their goods then in the ports to be stayed, and not entered, till it was paid, or bonds given for it."

6th. Corruption in taking advantage of his office to purchase large claims due to the king at an inadequate price and

then compound the payment of even that price, to the great loss of the king, and to his own profit.

7th. That he allowed the Office of Ordnance to go unrepaired, though money was appropriated for the purpose, and allowed contracts for greatly needed powder to lapse for want of payment.

8th. That he "hath committed unto his secretary a stamp of his own name" so that the secretary can act for him, "and that this stamp may be a ready way to make concealed Wardships, and may take away mean processes due to the king, for want of livery; and may antedate tenders, continuances and petitions; by reason whereof the king may be prejudiced great sums, by preferring one before another by Wardships."

He was found guilty, sentenced to lose all the offices which he held, incapacitated from holding any office, place or employment in the state and commonwealth, imprisoned in the Tower during the king's pleasure, fined £50,000, and forbidden to ever sit in parliament or come within the verge of the court.

IMPEACHMENTS OF THE DUKE OF BUCKINGHAM, THE EARL OF BRISTOL AND LORD CONWAY, 2 Howell's State Trials 1268; 2 Cobb. Parl. Hist. 80 (1626).

"Whilst the House of Commons was busy in carrying on, what is called in their Journals "The Cause of Causes" and finishing their Articles against the Duke of Buckingham, despite the king's "strong attachment to Buckingham," "the king commanded his Attorney General to charge his lordship (the Earl of Bristol) with High Treason and other great and enormous Crimes, Offences and Contempts . . . against our late Sovereign Lord King James, of Blessed memory, deceased, and our Sovereign Lord the King's majesty, which now is. This was done, the ARTICLES AGAINST THE EARL OF BRISTOL being as follows:

1st. That the said Earl being trusted and employed by the said late king as his ambassador to Ferdinando, then and now emperor of Germany, to Philip 4, then and now king of Spain, . . . and having commission and particular and special direction to treat with the said emperor and the king of Spain for the plenary restoring of such parts of the dominions, territories and possessions of the count Palatine of the Rhine . . . which were then wrongfully, and in hostile manner taken, and possessed with and by the crimes of the said emperor and king of Spain; . . . and also to treat with the said king of Spain, for a Marriage to be had between the most high and excellent

prince Charles, Prince of Wales, . . . and the most illustrious Donna Maria the Infanta of Spain, sister to the now king of Spain; did . . . falsely, wilfully and traitorously . . . inform, advise and assure the late king, that the said emperor and king of Spain would really, fully and effectually make restoration . . . of the said dominions, territories and possessions, . . . and that the king of Spain did really, fully and effectually intend the said marriage, . . . whereas they . . . intended only by those Treaties to gain time and to compass their own ends and purposes to the detriment of this kingdom; all of which the said Earl of Bristol neither was nor could be ignorant."

2nd. That knowing of the necessity for an early completion of the treaties with Spain he "falsely, wilfully and traitorously . . . continued those treaties upon generalities without effectual pressing the said king of Spain unto particular conclusions . . . to the high dishonor of his said late majesty, and to the extreme danger and detriment of his majesty's person, his crown and dominions, confederates and allies."

3rd. That he "did cunningly and traitorously strive to retard the resolution of the said late king to declare himself an enemy to the said king of Spain, . . . to the extreme danger, dishonor and detriment of this kingdom."

4th. That upon being "told that there was little probability that these Treaties would or could have any good success, he, the said earl, acknowledged as much," and said that he did not care "for he would take care to have his Instructions perfect, and pursue them punctually, and howsoever the business went he would make his fortune thereby" and from the beginning "intended not the service or honour of his late majesty, but his own currupt and sinister ends and his own advancement."

5th. "That from the beginning he did . . . intend and resolve, That if the said Marriage . . . should by his ministry be effected, that thereby the Romish religion and professors thereof should be advanced within this realm, and other his majesty's realms and dominions, and the true religion and professors thereof discouraged and discountenanced . . . and to that end and purpose . . . often counselled and persuaded his said late majesty to set at liberty the Jesuits and Priests of the Romish religion . . . and to grant and allow unto the Papists and Professors of the Romish religion free toleration, and silencing of all laws made, and standing in force against them."

6th. That as a result of "the false Informations and Intelli-

gences of the said Earl of Bristol" the then prince did "undertake in his own person his long and dangerous journey into Spain" in the endeavor to conclude the treaties or learn the real facts; "and did accordingly and speedily break them off. By which journey, the person of the said prince, being then heir apparent to the crown of the realm, and in his person the peace and safety of this kingdom, did undergo such apparent and such inevitable danger, as at the very remembrance thereof the hearts of all good subjects do even tremble."

7th. That when the Prince arrived in Spain he "cunningly, falsely and traitorously moved and persuaded the Prince, being then in the power of a foreign king of the Romish religion, to change his religion . . . whereas it had been the duty of a faithful servant to God and his master . . . to have prevented so great an error, and to have persuaded him against it, so as to have avoided the dangerous consequences thereof to the true religion and to this state."

8th. To induce the Prince to change his religion while in Spain "he traitorously used these words unto the said Prince. 'That the state of England did never any great thing but when they were under the obedience of the Pope of Rome; and that it was impossible they could do anything of note otherwise.' "

9th. That during the time of the Prince's being in Spain as aforesaid, the prince consulting and advising with the said Earl and others about a new offer made by the king of Spain touching the Palatinate which was that the eldest son of the prince Palatine should marry with the emperor's daughter, "but must be bred in the emperor's court, and the said Earl delivered his opinion that the proposition was reasonable."

10th. That when the Prince "resolved to return from the court of Spain . . . he left the powers of the deposorios with the said Earl of Bristol" with an "express direction not to dispatch the deposorios, until a full conclusion were had of the other Treaty of the Palatinate, with this of the marriage" yet he made a "breach of his instructions; and if the same had not been prevented by his late majesty's vigilancy, it might have turned to the infinite dishonour and prejudice of his majesty."

11th. "That he hath offended in a high and contemptuous manner, in preferring a scandalous Petition to this honourable house, to the dishonour of his majesty of blessed memory deceased, and of his sacred majesty that now is, which are no way sufferable in a subject towards his sovereign; and in one Article of that Petition specially, wherein he gives his majesty the lie, in

denying and offering to falsify that relation which his majesty affirmed, and thereunto added many things of his own remembrance to both houses of parliament."

THE EARL OF BRISTOL IN TURN IMPEACHED THE DUKE OF BUCKINGHAM.

Charge: Divers Crimes and Misdemeanors.

1st. "That the Duke of Buckingham did secretly combine and conspire . . . to carry his majesty (then prince) into Spain, to the end that he might be informed and instructed in the Roman religion, and thereby have perverted the prince, and subverted the true religion established in England; from which misery this kingdom (next under God's mercy) hath, by the wise, religious, and constant carriage of his majesty, been almost miraculously delivered."

2nd. That such messages were "framed as might serve for a ground to set on foot this conspiracy; the which was done accordingly, and thereby the king and prince highly abused."

3rd. "That the said duke at his arrival in Spain nourished the Spanish ministers, not only in the belief of his own being popishly affected; but did . . . from time to time give the Spaniards hope of the prince's conversion; the which conversion he endeavored to procure by all means possible; and thereby caused the Spanish ministers to propound far worse conditions for religion than had been formerly . . . signed under their majestys' hands."

4th. "That the Duke of Buckingham having several times . . . moved and pressed his late majesty . . . to write a letter unto the pope"; which the Earl of Bristol while in England prevented, "yet not long after the earl was gone, he procured such a letter to be written from his late majesty unto the pope, and to have him styled *Sanctissime Pater.*"

5th. "That the pope being informed of the Duke of Buckingham's inclination and intention in point of religion, sent unto the said duke a particular Bull in parchment, for to persuade and encourage him in the perversion of his majesty, then prince."

6th. "That the said duke's behavior in Spain was such, that he thereby so incensed the king of Spain and his ministers, as they would admit of no reconciliation nor further dealings with him; whereupon, the said duke, seeing that the match would now be to his own disadvantage, he endeavoured to break it; not for any service to the kingdom . . . but out of his particular ends and his indignation."

7th. "That after that he intended to cross the marriage, he put in practice divers undue courses . . . and thereby overthrew his majesty's purposes, and advanced his own ends."

8th. "That the said duke, as he had with his skill and artifices formerly abused their majesties; so, to the same end, he afterwards abused both houses of parliament, by his sinister relation of the carriage of affairs, as shall be made to appear in almost every particular that he spake unto the said houses."

9th. "As for the scandal given by his personal behaviour, as also the employing of his power with the king of Spain for the procuring of favours and offices, which he bestowed upon base and unworthy persons, for the recompense and hire of his lust; these things, as neither fit for the Earl of Bristol to speak, nor indeed for the house to hear, he leaveth to your lordships' wisdom how far you will be pleased to have them examined."

10th. "That the said duke hath been, in great part, the cause of the ruin and misfortune of the prince Palatine, and his estates, inasmuch as those affairs had relation unto this kingdom."

11th. "That the Duke of Buckingham hath in his relation to both houses of parliament wronged the Earl of Bristol in point of his honour by many sinister aspersions which he hath laid upon him, and in point of his liberty by many undue courses by his power and practices."

12th. "That the Earl of Bristol did reveal unto his late majesty both by word and letter in what sort the said duke had dissevered him, and abused his trust;" who heard each party against the other, "and not long after his blessed majesty sickened and died, having been in the interim much vexed and pressed by the said duke."

THE EARL OF BRISTOL ALSO IMPEACHED LORD CONWAY.

Charge: No general words are used to designate the charges.

1st. "That the Lord Conway is so great a servant of the Duke of Buckingham that he is . . . unfit to be a judge in anything that concerneth the duke or the earl."

2nd. "That the said Lord Conway professeth himself to be a secretary of the Duke of Buckingham's creation, and so acknowledgeth it under his own hand; and although he be the king's secretary of state, and a privy counsellor, he usually beginneth his letters to the duke 'Most gracious patron.'"

3rd. "That, as a secretary of the said duke's, the said Lord

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Conway hath been made the instrument of keeping the Earl of Bristol from the king's presence, and of imprisoning of him, by warrants only under his own hand, for which he cannot (as the earl conceiveth) produce any sufficient warrant."

4th. "That by the space of 12 months last past, the said Lord Conway hath been the cause of the earl's restraint, only by misinforming his majesty . . . and when it was made apparent unto him that the said earl was restored to his liberty, freely to follow his own affairs, by his late majesty of blessed memory, he replied, That that liberty, given by his majesty, expired with the king's death."

5th. "That the Earl of Bristol's mother, lying sick, upon her death bed, desired, for her comfort to see her son, and to give him her last blessing" which the Lord Conway refused to permit, "wherewith the earl acquainting the king by some of his bedchamber, his majesty was in a very great anger . . . and thereupon sent him presently free leave; which the secretary hearing of, sent likewise a letter of leave, but with divers clauses and limitations, differing from the leave sent him from the king's own mouth."

6th. "That having the businesses of the Earl of Bristol in his hands . . . he would never deliver any message to the king from the said earl, without first acquainting the said duke, and receiving his directions; and in a noble manner of freeness, stuck not to send him word."

7th. "That the Earl of Bristol having received from the Lord Conway twenty interrogatories, in his late majesty's name, . . . and his majesty having been pleased to assure the said earl, both by messages and letters, that upon satisfaction given to himself and the commissioners by his answers, he would personally put an end to the Earl of Bristol's business; the Earl of Bristol having so fully answered as would admit of no reply, . . . the said Lord Conway being the secretary in the commission . . . perceiving that the Earl of Bristol was like to be cleared, never moved for any further meeting; neither have they ever been permitted to meet until this day, whereby the troubles of the Earl of Bristol have been kept on foot until this present, and the said earl's imprisonment hath been enlarged twenty months."

8th. "That his majesty having directed the said interrogatories to be sent to the said earl within two or three days, the said Lord Conway 'would never send the said questions; and at last answered, That he had no more to do with the earl's business.' "

9th. "That the Earl of Bristol being set free by his late majesty to come to London, to follow his own affairs as he pleased, . . . the Lord Conway sent a letter from his majesty absolutely forbidding him going to parliament; and therein likewise was inserted a clause, 'That the earl should remain restrained as he was in the time of his late majesty', and so thereby a colour of restraint, under his majesty's hand, was gotten, which could never be procured in his late majesty's time; whereby the Earl of Bristol hath been unduly restrained ever since, without being able to procure any redress."

10th. "That the Lord Conway knowing that the Match for the marrying of the king of Bohemia's eldest son with the emperor's daughter, and being bred in the emperor's court, was allowed and propounded by his late majesty" yet the Lord Conway "hath suffered it to be charged as a crime against the earl of Bristol . . . that he should consent to the breeding of the young prince in the emperor's court."

11th. "That the Lord Conway hath been the cause of all the Earl of Bristol's troubles, by his dubious and intrapping dispatches, and inferring, That the said earl hath failed in his directions, when it shall be made appear, that his dispatches contained no such directions he hath alleged were given."

The king afterwards appeared in the House of Lords and stated that so far as the Duke of Buckingham was concerned "I myself can be a witness to clear him in every one of them"; and afterwards committed two of the managers of the House of Commons to the Tower because of what they said in their speeches against the duke. He also forbade the judges to give their opinions on certain questions submitted to them in the Earl of Bristol's case.

Notwithstanding the action of the king, the House of Commons presented the following:

ARTICLES OF IMPEACHMENT AGAINST THE DUKE OF BUCKINGHAM.

Charge: Misdemeanors, Misprisions, Offences and Crimes.

1st. That he "for his own profit and advantage procured and engrossed into his own hands the said several offices, (appearing in the duke's titles) both to the danger of the state, the prejudice of that service which should have been performed in them, and to the great discouragement of others."

2nd. That he paid to the "Earl of Nottingham, for the office of great admiral of England and Ireland, and the principality of Wales, and office of the general governor of the seas and ships,

to the intent that the said duke might obtain the said offices to his own use, the sum of £3000 of the lawful money of England; and did also, about the same time, procure from the said king a further reward for the surrender of the said office to the said earl of an annuity of £1000 by the year, for and during the life of the said earl; . . . and thereupon, and by reason of the premises said offices were obtained by the said duke for his life . . . (which) offices highly touch and concern the administration and execution of justice, within the provision of the said laws and statutes of this realm."

3rd. "That the said duke did likewise . . . give and pay unto the right hon. Edward late Lord Zouch, lord warden of the cinque ports, and of the members thereof, and constable of the castle of Dover, for the said offices, and for the surrender of the said offices . . . the sum of £1000 of lawful money of England; and then also granted an annuity of £500 yearly to the said Lord Zouch, for the life of the said Lord Zouch, to the intent that he the said duke might thereby obtain the said offices to his own use."

4th. "Whereas the said duke, by reason of his said offices . . . ought at all times since the said offices obtained, to have safely guarded, kept, and preserved the said seas and the dominion of them; and ought also whenever they wanted either men, ships, munition, or other strength whatsoever, that might conduce to the better safeguard of them, to have used, from time to time, his utmost endeavour for the supply of such wants" yet he hath not according to his said offices, "during the time aforesaid, safely kept the said seas; insomuch, that by reason of his neglect and default therein, not only the trade and strength of this kingdom of England hath been during the said time, much decayed; but the same seas also have been, during the same time, ignominiously infested by pirates and enemies, to the loss of both very many ships and goods, and of many of the subjects of our sovereign lord and king."

5th. That "a ship called the St. Peter of Newhaven," belonging to "subjects of the king of France, being in perfect amity and league with our sovereign lord the king," having been with its cargo improperly taken by vessels sent out by the said duke, and its cargo removed by him, and being thereafter released by the king under his commission and decree "the said duke notwithstanding the said order, commission and decree detained still to his own use the gold, silver, pearls, emeralds, jewels, moneys and commodities so taken out of the said ship . . . in public violation and contempt of the laws and justice of this land."

6th. That the said duke, having wrongfully seized several ships and pinnaces, laden with goods and merchandize of very great value, and belonging to the East India Company he "unjustly did exact and extort from the said merchants the sum of £10,000 . . . following the discharge of those ships, which were not released by him, until they the said merchants did yield to give him, the said duke, £10,000 for the said release."

7th. That as great admiral of England he wrongfully did "procure one of the principal ships of his majesty's navy royal, called the Vanguard, . . . and six other merchant ships of great burthen and value, belonging to several persons inhabiting in London, the natural subjects of his majesty, to be conveyed over, with all their ordnance, munition, tackle and apparel into the ports of the kingdom of France; to the end that, being there, they might the more easily be put into the hands of the French king . . . to the apparent weakening of the naval strength of this kingdom, to the great loss and prejudice of the said merchants, and against the liberty of those subjects of our sovereign lord the king that are under the jurisdiction of the admiralty."

8th. "The said duke, contrary to the purpose of our sovereign lord the king, and his majesty's known zeal for the maintenance and advancement of the true religion established in the Church of England . . . did procure the said ship royal, and compel as aforesaid the six other ships to be delivered unto the said French king . . . to the end that the said ships might be used and employed, by the said French king, in his intended war against those of the said religion in the said town of Rochelle, and elsewhere within the kingdom of France; and the said ships were, and have been since, so used and employed by the said French king."

9th. That the said duke for his own particular gain required Lord Roberts, baron of Truro to "pay the sum of £10,000 to the said duke, and to his own use; for which said sum, the said duke . . . of the said late king, procured the title of Baron Roberts of Truro to the said Lord Roberts. In which practice, as the said Lord Roberts was wronged in this particular, so the example thereof tendeth to the prejudice of the gentry, and dishonour of the nobility of this kingdom."

10th. That he "did procure of the said king, the office of high treasurer of England to the Lord Viscount Mandeville; . . . and as a reward for the said procurement of the same grant he the said duke did then receive to his own use, of and from the said Lord Viscount Mandeville, the sum of £20,000

(and) . . . did procure of the late king of famous memory, the office of master of the wards and liveries to and for Sir L. Cranfield . . . and as a reward for the same procurement he, the said duke, had, to his own use, . . . the sum of £6000."

11th. "That he, the said duke, hath within the ten years last past, procured divers Titles of Honour to his mother, brothers, kindred and allies; . . . whereby the noble barons of England, so well deserving in themselves, and in their ancestors, have been much prejudiced, and the crown disabled to reward extraordinary virtues in future times with honour."

12th. That he did, "for the support of the many places, honours and dignities conferred on him, obtain a grant of divers manors, parcel of the revenue of the crown, and of the duchy of Lancaster, . . . and notwithstanding the great and inestimable gain made by him, by the sale of offices, honours, and by other suits by him obtained from his majesty . . . hath likewise, by his procurement and practice, received into his hands, and disbursed to his own use exceeding great sums that were the moneys of the late king, and the better to colour his doings in that behalf, hath obtained several privy-seals . . . as if those sums were directed for secret services concerning the state, which were, notwithstanding, disposed of to his own use."

13th. That notwithstanding the directions of his late majesty's physicians, and his duty to his late majesty, he "did, nevertheless, and without any sufficient warrant in that behalf, unduly cause and procure certain plaisters, and a certain drink and potion to be provided for his said majesty, without the direction or privity of his said late majesty's physicians, not prepared by any of his sworn apothecaries or surgeons, but compounded of several ingredients to them unknown; . . . after which said plaisters, and drink or potion, were taken and received by his said majesty as aforesaid, great distempers and divers ill symptoms appeared upon his said majesty, insomuch that the said physicians finding his majesty the next morning much worse, in the estate of his health, and holding consultation thereabout, did, by joint consent, send to the said duke, praying him not to adventure to minister to his majesty any more physic, without their allowance and approbation . . . which said adventurous act . . . is an offence and misdemeanor of so high a nature, as may justly be called, and is by the said commons deemed to be, an act of transcendent presumption, and of dangerous consequence."

"The Commons, upon the imprisonment of their Members . . . resolved to proceed in no other business, till they were righted in their liberties."

"These Impeachments were put a stop to by the dissolution of the parliament . . . exactly one week after the duke had put in his answer."

"A third parliament (being called) the Commons soon directed their attention to the Duke of Buckingham . . . parliament was prorogued, and the duke was killed by Felton, who seems to have been stimulated to this act, by the Votes of the House of Commons."

IMPEACHMENT OF THE JUDGES: JOHN BRAMSTON, JOHN FINCH, HUMPHREY DAVENPORT, JOHN DENHAM, RICHARD HUTTON, WILLIAM JONES, GEORGE CROOKE, THOMAS TREVOR, GEORGE VERNON, ROBERT BERKLEY, FRANCIS CRAWLEY AND RICHARD WESTON, 3 Howell's State Trials 1283; 1 Emlyn's State Trials 709 (1637).

Charge: High Treason and other great Misdemeanors.

Articles against Judge Berkley.

1. "That the said Sir Robert Berkley, then being one of the justices of the said court of King's Bench, hath traitorously and wickedly endeavored to subvert the fundamental laws and established government of the realm of England; and instead thereof to introduce an arbitrary and tyrannical government against law, which he hath declared by traitorous and wicked words, opinions, judgments, practices and actions appearing in the several Articles ensuing."

2. "Whereas by the statute made in the 25th year of the reign of Henry 8, prices of victuals are appointed to be rated in such manner, as in the said statute is declared; but it is manifest by the said statute, Corn is none of the victuals thereby intended; nevertheless some ill-affected persons endeavoring to bring a charge upon the subjects contrary to law . . . and thereupon great gain might be raised to his majesty by licences and dispensations for selling Corn at other prices: and a command from his majesty being procured to the Judges . . . to deliver their Opinions touching the question, Whether Corn was such victuals as was intended to have the price rated within the said statute; which said Opinion was contrary to law, and to the plain sense and meaning of the said statute, and contrary to his own knowledge, and was given and delivered by him, with the purpose and intention that the said unlawful charge might be imposed upon the subject."

3. "That an information being preferred in the court of Star Chamber by . . . his majesty's then Attorney General against John Overman, and fifteen other soap makers, defendants, charging them with several pretended offences . . . touching the making and uttering Soap and using the trade of soap makers, and other offences in the said information mentioned; whereunto the defendants did plead and demur as to part, and answer as to other parts of the said information . . . the said Sir Robert Berkley, then being one of the justices of the court of King's Bench . . . upon an order of reference to him and others, by the said court of Star Chamber, to consider the impertinency of said Answers, did certify the said court of Star Chamber, That the whole Answers, excepting the four words and ten last lines, should be expunged; leaving thereby no more substance of the said Answers than the plea of Not Guilty; And after, upon a reference to him and others by order of the said court, of the impertinency of the Interrogatories, he . . . certified, That nine and thirty of the said Interrogatories, and the Depositions upon them taken, should be suppressed . . . although the same did contain the defendants' most material defence, . . . both of which said certificates were contrary to law and justice, and contrary to his the said Sir Robert Berkley's own knowledge; . . . and by reason thereof the said . . . defendants were sentenced in the said court of Star Chamber to be committed prisoners to the Fleet, and disabled from using their trade of soap makers . . . and the said defendants, according to the said Sentence, were imprisoned and deprived of their trade and livelihood."

4. "That he, the said Sir Robert Berkley, then being one of the justices of King's Bench, and having taken an oath for the due administration of justice, according to the laws and statutes of this realm, to his majesty's liege people, on or about the last of December subscribed an Opinion in *haec verba:* 'I am of opinion, that as where the benefit doth more particularly redound to the good of the ports or maritime parts, (as in the case of piracy or depredations upon the seas) there the charge hath been, and may be lawfully imposed upon them, according to precedents of former times; so where the safety and good of the kingdom in general is concerned, and the whole kingdom in danger, (of which his majesty is the only judge) there the charge of the defence ought to be borne by all the realm in general: this I hold agreeable both to law and reason.' "

5. "That he, the said Sir Robert Berkley, then being one of

the justices of the court of King's Bench, subscribed an extra judicial Opinion, in answer to questions in a letter from his majesty" in relation to the ship money against which Hampden defended.

6. "That the said Sir Robert Berkley, then being one of the justices of the court of King's Bench . . . did deliver his opinion in the Exchequer Chamber against John Hampden, Esq., in the case of Ship-Money. That he, the said John Hampden, upon the matter and substance of the case, was chargeable with the money then in question."

7. "That he, the said Sir Robert Berkley, then being one of the justices of the court of King's Bench, and one of the justices of Assize for the county of York, did, at the assizes held at York . . . deliver his charge to the grand jury, 'That it was a lawful and inseparable flower of the crown for the king to command, not only the maritime counties, but also those that were inland, to find ships for the defence of the kingdom.' And then likewise falsely and maliciously affirmed, That it was not his single Judgment but also the judgment of his brethren. . . . And he, the said Sir Robert Berkley, then also said, That in some cases the Judges were above an act of parliament, which said false and malicious words were uttered, as aforesaid, with intent and purpose to countenance and maintain the said unjust opinions and to terrify his said majesty's subjects that should refuse to pay Ship-Money."

8. "That whereas Richard Chambers, merchant, having commenced a suit for trespass, and false imprisonment, against Sir Edw. Bromfield, knt., for imprisoning him, said Chambers, for refusing to pay said Ship-Money, . . . said Sir Robert Berkley, then being one of the justices of the court of King's Bench . . . upon debate of the said case . . . said openly in the court; 'That there was a rule of law and a rule of government'; and that 'many things which might not be done by the rule of law, might be done by the rule of government': and would not suffer the point of the legality of Ship-Money to be argued by Chambers' counsel."

9. "That the said Sir Robert Berkley, then being one of the justices of the court of King's Bench . . . did revile and threaten the grand jury . . . for presenting the removal of the communion table in All Saints Church in Hertford aforesaid, out of the place where it anciently and usually stood, and setting it altarways, against the laws of this realm . . . And he, the said Sir Robert Berkley, compelled the foreman of the jury to tell him who gave any such information, and thereby knowing

it to be one Henry Brown, one of the said grand jurors . . . he, the said Sir Robert Berkley, told the said Brown, he should therefore find sureties for his good behavior, . . . and thereupon the said Brown offered a sufficient bail, but he, the said Sir Robert Berkley, being incensed against him, refused the said bail and committed the said Brown to prison, where he lay in irons till the next morning; and used to the said Brown, and the rest of the jurors, many reviling and terrifying speeches. . . . And whereas several indictments were preferred against Matthew Brook, parson of Yarmouth, by John Ingram and John Carter for refusing several times to administer the sacrament of the Lord's supper . . . the said Sir Robert Berkley, then being one of the judges of the Assize, proceeded then to the trial on the said indictments; . . . and the said Sir Robert Berkley did then much discourage said Ingram's counsel and overrule the cause for matter of law, so as the jury never went from the bar, but found for the said Brook: and the said Sir Robert Berkley bound the said Ingram to the good behaviour for the prosecuting the said indictments, and ordered him to pay costs to the said Brook for wrongfully indicting him, . . . which said proceedings . . . were contrary to law and justice and to his own knowledge."

10. "That the said Sir Robert Berkley, being one of the justices of the court of King's Bench . . . deferred to discharge or bail Alexander Jennings prisoner in the Fleet . . . until he should bring a certificate that he had paid his assessments for Ship-Money in the county of Bucks, but remitted him. And in Michaelmas-term after . . . refused to discharge or bail him, but remitted him. And in the Easter-term . . . a fourth rule was made for the said Jennings to let his majesty's attorney-general have notice thereof, and notice was given accordingly: and the said Jennings by another *Habeas Corpus* being brought to the bar in Trinity-term after . . . was again remitted to prison. And he, the said Sir Robert Berkley, did . . . defer to grant his majesty's writs of *Habeas Corpus* for William Pargiter and Samuel Danvers, Esquires, prisoners in the Gate-House and in the Fleet; and afterwards having granted the said writ of *Habeas Corpus* . . . deferred to bail the said Pargiter and Danvers, and . . . being desired to bail the said Pargiter and Danvers, remitted them, where they remained prisoners . . . although the said Jennings, Pargiter and Danvers on all and every the said returns were clearly bailable by law; . . . And he, the said Sir Robert Berkley, being one of the justices of the court of King's Bench, denied to grant

his majesty's writs of *Habeas Corpus* to very many others of his majesty's subjects; and when he had granted the said writs of *Habeas Corpus* to very many others his majesty's subjects . . . remanded them, where they remained prisoners very long, and refusals and delays to discharge prisoners, or to suffer them to be bailed, . . . are destructive to the fundamental laws of this realm, and contrary to the former resolutions in parliament and to the Petition of Right."

11. "That whereas there was a cause depending . . . between Samuel Booty, clerk, and Collard for 2 sh. in the pound, for tithes for rents of houses in Norwich, and the said Collard moved . . . for a prohibition to stay proceedings . . . and delivered into the said court of King's Bench his suggestions, that the said cause . . . was only for tithes for rents of houses in Norwich, which was determinable by the common law only; yet the said Sir Robert Berkley, being one of the justices of the said court of King's Bench, and sitting in the said court, deferred to grant a prohibition, . . . where the same by the laws of this realm ought to have been granted, contrary to the laws of this realm and his own knowledge."

Afterwards articles were exhibited against the other judges, but the record does not show what was finally done with the impeachments.

IMPEACHMENT OF THOMAS, EARL OF STRAFFORD, LORD LIEUTENANT OF IRELAND, 3 Howell's State Trials 1382; 2 Cobb. Parl. Hist. 737; 1 Emlyn's State Trials 723: Salmon's Abridgment of State Trials 164 (1640).

Charge: High Treason.

He was convicted and executed.

IMPEACHMENT OF LORD KEEPER FINCH, 4 Howell's State Trials 1; 2 Cobb. Parl. Hist. 694; Salmon's Abridgment of State Trials 160; 7 Emlyn's State Trials 309 (1640).

Charge: High Treason.

Owing to the civil war and the continued absence of the Lord Keeper, nothing further was ever done in the case, though "he endured eight years' banishment, and Compositions amounting to £7000."

IMPEACHMENT OF DR. JOHN COSIN, 4 Howell's State Trials 22; 2 Cobb. Parl. Hist. 725 (1640).

Charge: That the respondent was a delinquent and endeavored to seduce divers citizens to popery.

1st. "That he was the first man that caused the communion table in the church of Durham to be removed and set altar-wise; in the erection and beautifying whereof he, being treasurer, expended £200."

2nd. "That he used to officiate at the west side thereof, turning his back to the people."

3rd. "That he used extraordinary bowing to it."

4th. "That he compelled others to do it, using violence to the persons of them that refused so to do."

5th. "That he converted divers prayers in the book of common prayer into hymns, to be sang to the choir, and played with the organ, contrary to the ancient custom of that church."

6th. That in violation of custom and at his direction "they sung an anthem in the choir" instead of a song at the end of the sermon.

7th. "That the first Candlemas-day at night that he had been in that church, he caused 300 wax candles to be set up, and lighted in the church at once, in honor of Our Lady, and placed three score of them upon and about the altar."

8th. That he caused two seraphim which had been demolished by virtue of a commission granted by Queen Elizabeth "to be repaired and most gloriously painted."

9th. That while "unmarried he wore a cope of white satin, never officiating in any other . . . which after marriage he cast off, and never after wore."

10th. That he refused to cut the bread used in the sacrament with any other than a knife belonging to the church "thinking all others that were unconsecrated polluted."

11th. That in a sermon he stated "the reformers of this church when they abolished the mass, took away all good order, and instead of reformation, made it a deformation."

12th. That he nearly always called the ministers priests, and the communion table the altar.

13th. That he bought from a convicted Jesuit and used in the church a cope "having upon it the picture of the invisible and incomprehensible Trinity."

14th. That he abandoned morning prayers at five o'clock in the morning, and substituted singing and playing on the organ and the reading of a few prayers.

15th. "That he framed a superstitious ceremony" by causing the altar boys to bow "towards the altar at their first entrance . . . thrice before they lighted their tapers."

16th. "That he counselled some young students of the university to be imitators and practisers of his superstitious ceremonies."

17th. "That he used upon communion days to make the sign of the cross, with his finger, both upon the seats whereon they were to sit, and the cushions to kneel upon, using some words when he so did."

18th. That when Dean Hunt directed a number of tapers and lights to be pulled down, the respondent "came to the fellow and there miscalled him in most uncivil manner, and began to beat him in the public view of the congregation, to the great disturbance of the same."

19th. That he used "words derogating from the king's prerogative. The words were these: 'the king hath no more power over the church than the boy that rubs my horses' heels.' "

20th. That upon being informed that a certain canon had spoken about what he was doing, he "sets both his hands upon him, calling him rogue and rascal and many other names."

21st. That he tried to ensnare said canon into doing unlawful things so as to dismiss him from his place, and failing to find any cause so to do "he put him out by violence having no other reasons why he did so, but because he had no good voice."

The respondent was put upon bail for his appearance, but was never sent for again.

IMPEACHMENT OF BISHOP WREN, 4 Howell's State Trials 28 (1640).

Charge: High Crimes and Misdemeanors.

1st. That he raised the chancels of churches "some two, some three, some four steps, so that the communion table there placed altarwise might be the better seen of the people."

2nd. That he arranged the communion table "after the popish and idolatrous manner, so that the minister should stand and officiate at the west end of the table with his back towards the people."

3rd. That he arranged a separate entrance for the ministers, and punished the laymen who endeavored to enter that way.

4th. That he altered the pews in the churches so "that the people might kneel with their faces eastward, toward the communion table."

5th. That he enjoined every minister to read some part of the morning prayer "at the said table as a part of the communion service."

6th. That he and his chaplains "did ever after the table was so set altarwise, use and perform such, so many, and so frequent bowings and adorations, examples, to draw others to the like superstitious gestures, as have given great scandal and offence to the sound, sincere, and well affected Christians."

7th. That he "enjoined all the people to come up to the rail and receive the holy communion, and there kneel, and do reverence before the holy table placed altarwise, and gave directions to the ministers not to administer the communion to such people as should not come up, and do such reverence."

8th. That he refused to allow "sermons on the Lord's Days in the afternoon or on the week days at all, without his license . . . and the more to hearten and confirm the people in prophaning the Lord's day, he enjoined the ministers to read publically in their churches, a book published touching sports on the Lord's day, for not reading whereof some ministers were by the command and direction of the said bishop, suspended."

9th. That in violation of the previous custom, he did "command and enjoin, that there should be no difference in ringing of bells to church when there was a sermon and when there was not."

10th. He forbad the preaching of preparatory sermons before communion.

11th. He "enjoined that no minister should use any prayer before his sermon . . . and enjoined that no prayer should be made in the pulpit for the sick, and that such as were prayed for in the reading desk, should be prayed for only in the two collects prescribed for the visitation of the sick in private houses."

12th. In the parish of Knatschal he did "enjoin the church wardens there, that no prayer should be read in that church until they had got a surplice."

13th. That he "excommunicated, suspended or deprived, and otherwise censured and silenced" "sundry godly, painful preaching ministers", for not observing his illegal innovations.

14th. That "he did unlawfully compel the inhabitants of several parishes . . . to rail in their communion tables, to remove the pews and seats, and to make other alterations in the respective churches" at great expense.

15th. That he "molested, disquieted and vexed in their estates and consciences" certain persons who would not comply with his unlawful innovations.

16th. That by his unlawful acts he forced "many of his majesty's subjects to the number of 3000" to leave the kingdom.

17th. That he untruthfully stated, publically and privately that "that what he did in the same was by his majesty's command."

18th. That he "did in his own person use superstitious and

idolatrous actions and gestures in the administration of the Lord's supper."

19th. That he "caused a crucifix, that is to say the figure of Christ upon the cross, to be engraven upon his episcopal seal, besides the arms of the See."

20th. "That he hath chosen and employed" only those "whom he knew to be and stand affected to his innovated courses, and to Popish superstition."

21st. That he admitted his own chaplains "into livings which became void within his own diocese" and forced the true incumbents "to long and chargeable suits to evict such incumbents and to recover their own right."

22nd. "That he and others in the year 1635 sold or granted away the profits of his primary visitation for £500 over and above the charges of the visitation."

23rd. That he compelled the church wardens "to have their presentments written by clerks specially appointed by such as bought the said visitation, to whom they paid excessive sums of money for the same."

24th. That he wrongfully induced his majesty to require the citizens of Norwich "to pay 2 sh. in the £ in lieu of the tithes of houses within the several parishes of the said city."

25th. "That he assumed to himself an arbitrary power, to compel the respective parishioners in the said diocese, to pay great and excessive wages to parish clerks."

No further proceedings upon this impeachment appear to have taken place after their presentation to the House of Lords.

ARTICLES OF IMPEACHMENT OF SIR FRANCIS WINDEBANK, SECRETARY OF STATE, 4 Howell's State Trials 41; 2 Cobb. Parl. Hist. 682 (1640).

Charge: No general words are used to designate the charges.

1st. "Seventy-four Letters of Grace to Recusants, within these 4 years, signed by his own hand."

2nd. "Sixty-four Priests in the Gatehouse, within these 4 years, discharged, for the most part, by him."

3rd. "Twenty-nine discharged by his verbal order."

4th. "A Warrant to protect one Muffon, a condemned Priest, and all the houses he frequented."

5th. "One committed by the king's own hand, and discharged by him, without signification of the king's pleasure therein."

6th. "A Petition of St. Giles in the fields, near London, to

the king, of the Increase of Popery in their parish, wherein 21 persons were seduced and turned by two priests, the which priests were both discharged by him."

He fled into France before the articles were presented, and nothing further appears to have been done therewith.

IMPEACHMENT OF SIR GEORGE RATCLIFF, 4 Howell's State Trials 47; 2 Cobb. Parl. Hist. 698 (1640).

Charge: High Treason.

He was taken into custody and allowed counsel, but what was further done in the matter does not appear.

IMPEACHMENT OF SIR RICHARD BOLTON, LORD CHANCELLOR OF IRELAND; DR. JOHN BRAMHALL, LORD BISHOP OF DERRY; SIR GERARD LOWTHER, LORD CHIEF JUSTICE OF THE COMMON PLEAS; AND SIR GEORGE RATCLIFF, 4 Howell's State Trials 51 (1641).

Charge: High Treason.

"What was the end of these prosecutions does not appear."

IMPEACHMENT OF DR. JOHN WILLIAMS, ARCHBISHOP OF YORK; DR. THOMAS MORETON, BISHOP OF DURHAM; DR. ROBERT WRIGHT, BISHOP OF COVENTRY AND LITCHFIELD; DR. JOSEPH HALL, BISHOP OF NORWICH; DR. JOHN OWEN, BISHOP OF ST. ASAPH; DR. ROBERT SKINNER, BISHOP OF OXFORD; DR. WILLIAM PIERS, BISHOP OF BATH AND WELLS; DR. GEORGE COKE, BISHOP OF HEREFORD; DR. MATTHEW WREN, BISHOP OF ELY; DR. GODFREY GOODMAN, BISHOP OF GLOUCESTER; DR. JOHN WARNER, BISHOP OF PETERBOROUGH; AND DR. MORGAN OWEN, BISHOP OF LLANDAFF, 4 Howell's State Trials 64; 2 Cobb. Parl. Hist. 861 (1641).

Charge: High Treason.

No articles of impeachment appear to have been presented to the Lords, pending which, however, the defendants were imprisoned in the Tower for 18 weeks and were then released on bail. Nothing further seems to have been done.

This most remarkable charge of "High Treason" is founded solely on a petition presented by defendants to the Lords, alleging that they were wrongfully excluded from the House of Lords by a mob, and protesting that because thereof "all laws, order, votes, resolutions and determinations" passed during their exclusion, are "in themselves, null, and of none effect."

IMPEACHMENT OF JOHN EGERTON, EARL OF BRIDGEWATER [1] (1641).

Charge: No general words are used to designate the charges.

The House of Commons adopted the following resolutions touching Sir John Corbett, one of its members:

"Resolved (1) That the Imposition of Thirty Pounds per annum laid upon the Subjects of the County of Salop, for the Mustermaster's Fee, by the Earl of Bridgewater, Lord Lieutenant of that County, is an illegal Charge, and against the Petition of Right; and that it is high Presumption for a Subject to impose any Tax upon the Subject; and that the taking of it is an Extortion, and against the Right of the Subject; (2) That the Attachment from the Council-board, by which Sir John Corbett was committed, was an illegal Warrant; (3) That Sir John Corbett ought to have Reparation for his unjust Vexations and Imprisonment; (4) That the Earl of Bridgewater ought to make Reparation to Sir John Corbett."

Those resolutions were transmitted to the House of Lords, and a conference held between the two Houses, in which those resolutions appear to have been treated as Articles of Impeachment against the respondent.

A date was fixed for a hearing of the complaint, and several orders made touching the matter, but it was never heard.

IMPEACHMENT OF DANIEL O'NEALE, 4 Hatsell's Precedents 104, 399 (1641).

Charge: High Treason.

"No articles brought up. He was committed to the Gatehouse," and afterwards "he is removed from the Gatehouse to the Tower."

IMPEACHMENT OF LORD KIMBOLTON; MR. DENZIL HOLLIS; SIR ARTHUR HAZELRIG, BART.; MR. JOHN PYM; MR. JOHN HAMPDEN AND MR. WILLIAM STRODE, 4 Howell's State Trials 83; 2 Cobb. Parl. Hist. 1005 (1641).

Charge: High Treason.

The king, through his attorney general Sir Edward Herbert, presented to the House of Lords articles of impeachment as follows:

[1] For information regarding this Impeachment, I am indebted to Cuthbert Headlam, Esq., Secretary of the House of Lords. I have found no report of it elsewhere than in a note to 14 How. St. Tr. 276; and in the Journal of the House of Lords, Vol. IV, pages 382, 383, 407, 418; and in the Journal of the House of Commons, Vol. XI, pages 167, 228.

1. That they have traitorously endeavored to subvert the fundamental Laws and Government of this kingdom, to deprive the king of his regal power, and to place in the subjects an arbitrary and tyrannical power, over the Lives, Liberties and Estates of his majesty's liege subjects.

2. That they have traitorously endeavored, by many foul aspersions upon his majesty and his government, to alienate the affections of his people, and to make his majesty odious to them.

3. That they have endeavored to draw his majesty's late army to disobedience to his commands, and to side with them in their traitorous designs.

4. That they have traitorously invited and encouraged a foreign power to invade his majesty's kingdom of England.

5. That they have traitorously endeavored to subvert the rights and very being of parliaments.

6. That for the completing of their traitorous designs, they have endeavored, as far as in them lay, by force and terror, to compel the parliament to join with them in their traitorous designs; and, to that end, have actually raised and countenanced tumults against the king and parliament.

7. That they have traitorously conspired to levy, and actually have levied, war against the king.

The king appeared in person in the House of Commons and demanded the arrest of the five members of that House who were impeached, and asked the speaker whether they were in their places. The speaker replied as follows:

"May it please your majesty; I have neither eyes to see nor tongue to speak in this place, but as the house is pleased to direct me, whose servant I am here; and humbly beg your majesty's pardon, that I cannot give any other answer than this to what your majesty is pleased to demand of me."

The Commons appointed a committee to consider the matter, but refused to permit the arrest of the defendants, five of whom were members of that House, because it would be a breach of the privilege of parliament. The two Houses then by resolution petitioned his majesty "that those who informed him against these members may come in five days' time to charge them, or else that they may be cleared in such a way as the parliament shall think fit."

The matter seems then to have been dropped by his majesty. The House of Commons, however, impeached the attorney general who presented those charges, as appears by the next impeachment herein.

IMPEACHMENT OF SIR EDWARD HERBERT, 4 Howell's State Trials 119; 2 Cobb. Parl. Hist. 1089 (1642).

Charge: High Crimes and Misdemeanors.

No formal articles of impeachment seem to have been presented in this case. Nevertheless he was heard and acquitted, a result so displeasing to the Commons, that the Lords reversed themselves and convicted him, and adjudged "that he should be disabled from ever being a parliament man, incapable of any place of judicature, or other preferment than of attorney general, which they could not deprive him of by reason of the former vote, and that he should be committed to the prison of the Fleet."

IMPEACHMENT OF LORD DIGBY, 4 Howell's State Trials 134; 2 Cobb. Parl. Hist. 1100 (1642).

Charge: High Treason.

Articles of impeachment were presented, but nothing further seems to have been done in the case.

IMPEACHMENT OF GEORGE BENYON, 4 Howell's State Trials 141; 2 Cobb. Parl. Hist. 1149 (1642).

Charge: High Crimes and Misdemeanors.

1st. That respondent "did wickedly and maliciously contrive and frame a false, dangerous and seditious petition, for and on the behalf of himself and divers other citizens, . . . containing therein, divers false and seditious matters . . . and by false and sinister persuasions, solicitations and practices, procured divers citizens to subscribe their hands to the said petition."

2nd. That he did "falsely and maliciously give out and utter divers bold, arrogant, false and scandalous speeches, in derogation and contempt of the privileges of parliament."

He was convicted and sentenced to disfranchisement, incapability of holding office, imprisonment for two years and fined £3000.

IMPEACHMENT OF WILLIAM SEYMOUR, MARQUESS OF HERTFORD [2] (1642).

Charge: High Treason.

After the Articles of Impeachment were read in the House of Lords, "a conference was demanded with the Commons as to

[2] For information regarding this Impeachment, I am indebted to Cuthbert Headlam, Esq., Secretary of the House of Lords. I have found no report of it elsewhere than in the Journal of the House of Lords, Vol. V, pages 286, 307, 360; and in the Journal of the House of Commons, Vol. II, pages 695, 719, 745, 769.

the best way of securing the attendance of the Marquess and other delinquents impeached by the Commons."

No further proceedings appear to have been taken.

IMPEACHMENT OF RICHARD SPENCER[3] (1642).

Charge: High Crimes and Misdemeanors.

The Articles of Impeachment have not been printed and cannot be found. The journals of the two Houses show, however, that they related to the Kentish Petition to Parliament, and must have been similar to those against Sir Edward Dering hereinafter set forth.

He was arrested, admitted to bail, rearrested and "restrained within the King's Garrison."

The case was never tried, but what was afterwards done does not appear.

IMPEACHMENT OF JOHN WELD OR WYLDE, HIGH SHERIFF OF SHROPSHIRE[4] (1642).

Charge: "Divers Great Misdemeanors and Malicious Carriages of the said Sheriff against the Parliament and against the Peace of the County."

The Articles of Impeachment have not been printed and cannot be found.

The case was not tried, probably because he was not summoned. The last entry regarding it is the request of the Lords "to have a Conference with the House of Commons, to advise with them what course is fit to be taken for sending for those Delinquents that are impeached, and to bring them to the Parliament to receive their Trial, because, the Seal being with the King, Proclamation Writs which are the legal Summons, are refused to be sealed."

IMPEACHMENT OF SIR EDWARD DERING, 4 Howell's State Trials 151; 2 Cobb. Parl. Hist. 1188 (1642).

Charge: High Crimes and Misdemeanors.

1st. That he "did wickedly and maliciously contrive and frame certain dangerous and seditious Heads or Articles of a petition to be presented to the parliament."

[3] For information regarding this Impeachment, I am indebted to Cuthbert Headlam, Esq., Secretary of the House of Lords. I have found no report of it elsewhere than in the Journal of the House of Lords, Vol. V, pages 59, 60, 62; Vol. VIII, page 289; Vol. XX, page 531; and in the Journal of the House of Commons, Vol. II, pages 507, 557, 565, 700, 707.

[4] For information regarding this Impeachment, I am indebted to Cuthbert Headlam, Esq., Secretary of the House of Lords. I have found no report of it elsewhere than in the Journal of the House of Lords, Vol. V, pages 357, 360; and the Journal of the House of Commons, Vol. II, pages 706, 763, 766, 768, 774.

2nd. That he did "wickedly and seditiously contrive and frame a dangerous, scandalous and seditious petition, . . . and by false and sinister suggestions, persuasions and solicitations, caused the same to be voted and assented to in open court."

3rd. That he did "wickedly and seditiously publish the said petition and caused . . . copies thereof to be dispersed throughout the said county" of Kent.

4th. That he "did unlawfully, wickedly and maliciously procure many hands to the said petition; and did labour and solicit divers of the inhabitants of the said county . . . in great multitudes, to go along with the said petition; intending thereby to have raised commotion and sedition amongst the people, and to have awed the parliament."

Nothing further appears to have been done in this proceeding.

IMPEACHMENT OF SIR RICHARD GURNEY, 4 Howell's State Trials 159 (1642).

Charge: High Crimes and Misdemeanors.

1st. As Lord Mayor of London, he did "proclaim and publish, or did cause and procure to be openly read and published within the said City of London, and suburbs of the same, divers illegal proclamations, containing in them matters of dangerous consequence, and contrary to the votes of both houses of parliament."

2nd. That he "did earnestly labour and endeavour to suppress" the presentation of a certain petition to parliament and "did threaten and menace the said petitioners, and imprisoned divers of them, contrary to the laws and statutes of this realm, and contrary to the liberty of the subject."

3rd. That he contrived "to raise tumults and discords within the said city and to make and increase the difference between his majesty and the parliament"; and he permitted divers persons "to escape without due and deserved punishment."

4th. That when parliament directed "a great quantity of arms and other ammunition should be laid into some store houses within the said city for his majesty's service, . . . he did, in a most obstinate and malicious manner, withstand, refuse or gainsay the same, contrary to the order of both houses of parliament."

He was convicted and dismissed from his office, declared incapable of holding office in the City of London, or to bear or receive any further honour, and to be imprisoned in the Tower of London during the pleasure of the House of Lords.

IMPEACHMENT OF SIR THOMAS GARDINER, 4 Howell's State Trials 167 (1642).

Charge: High Crimes and Misdemeanors.

1st. That he did "wickedly advise, direct, and earnestly press" the Lord Mayor, aldermen and councilmen "to impose, levy and take of the citizens and inhabitants, without their consent, the illegal tax of ship money."

2nd. That he "did wickedly advise, and persuade the Lord Mayor, aldermen and common council of London . . . to tax and levy on the said citizens and inhabitants without their consent in parliament, a certain sum of money by way of loan to furnish his majesty for his wars."

3rd. That he "did earnestly persuade and press the Lord Mayor, aldermen and common council to impress, clothe and conduct 200 men of the said citizens and inhabitants to serve the king in his wars in the north, against his majesty's subjects of Scotland."

4th. That knowing of the intention of certain citizens to present a petition to his majesty, he "did reveal and disclose to his majesty their counsel and intention of delivery of that petition and then told the persons appointed to deliver the same petition, that his majesty would receive no petition from them."

5th. That he "laboured to hinder the calling of parliaments, . . . and advised and persuaded the then Lord Mayor, aldermen and common council of London to lend the king £100,000 for his wars against his majesty's subjects of Scotland."

6th. That he endeavoured "by threatening speeches to discourage and terrify the petitioners from further proceeding in their petition" to the Lords and Commons in parliament.

7th. That he "did most maliciously and wickedly advise and direct the making and framing of two false and seditious petitions, . . . on purpose to divert his majesty from assenting to the said ordinance and to work a distraction in the said city, and to bring the parliament, city and whole kingdom into disorder and confusion."

Nothing further seems to have been done with this impeachment.

IMPEACHMENT OF HENRY HASTINGS, SIR RICHARD HALFORD, SIR JOHN BALE, AND JOHN PATE, ESQ., 4 Howell's State Trials 171; 2 Cobb. Parl. Hist. 1407 (1642).

Charge: High Crimes and Misdemeanors.

"Whereas . . . several warrants issued out, by order of both houses of parliament . . . for the apprehending of the said (respondents) . . . for High Crimes and Misdemeanors by them committed against the said houses of parliament, to answer the same before the said houses; they . . . well knowing the premises, and the said Richard Halford, Sir John Bale and John Pate, being then, and yet, Justices of the Peace of the said County, . . . wickedly and maliciously, without warrant of law, did raise . . . forces of horse and foot to the number of 300 persons, or thereabouts, . . . and many of them Papists, and them unlawfully assembled at Loughborough in the said county of Leicester . . . being armed with swords and pikes; and with pistols, muskets and carbines, ready charged with powder and bullets, and other habiliments of war, marched along in a warlike manner; with drums beating, colours flying, and their matches lighted, to the great terror and affrightment of his majesty's subjects, . . . to the intent to keep themselves from being arrested by the said officers of both houses of parliament; and in case they should be arrested, then to rescue themselves by force. . . . That John Chambers and James Stamford, being authorized thereunto . . . together with Archdale Palmer, Esq., then high Sheriff of the said county of Leicester, and divers other persons in their aid and assistance, repaired to the said place to execute the said warrants from both houses of parliament . . . and read them openly in the hearing of the said Henry Hastings, etc., to yield obedience to the said warrants; which they refused to do: but, instead thereof, they, and other their said adherents, did violently assault the said high sheriff, Chambers, and Stamford, and rode upon them with their horses, . . . to the great danger of their lives: and the said Henry Hastings, etc., by force and arms, and in a warlike manner, at the time and place aforesaid, rescued themselves from the said officers and sheriff, in contempt of justice, and to the high affront and scorn of parliament" . . .

"It does not appear that the Parties impeached ever put in an Answer to these Articles, or that any further Proceedings were had upon them."

IMPEACHMENT OF LORD STRANGE, 4 Howell's State Trials 173; 2 Cobb. Parl. Hist. 1466 (1642).

Charge: High Treason.

A single article of impeachment was presented, but nothing further seems to have been done thereafter.

IMPEACHMENT OF JOHN BROCCAS, KEEPER OF THE GATEHOUSE[5] (1642).

Charge: High Treason, "for suffering Captain Legg, his prisoner upon High Treason, to escape."

No articles of impeachment appear to have been drawn, but he pleaded not guilty, and was "committed close prisoner to the Poultry Comptor."

He was in custody ten months and then admitted to bail.

No further mention is made of the case.

IMPEACHMENT OF THE NINE LORDS AT YORK, VIZ., SPENCER, EARL OF NORTHAMPTON; WILLIAM, EARL OF DEVONSHIRE; HENRY, EARL OF DOVER; HENRY, EARL OF MONMOUTH; CHARLES, LORD HOWARD OF CHARLTON; ROBERT, LORD RICH; CHARLES, LORD GREY OF RUTHVEN; THOMAS, LORD COVENTRY; AND ARTHUR, LORD CAPEL, 4 Howell's State Trials 176 (1642).

Charge: High Crimes and Misdemeanors.

No formal articles were presented, but the judgment of the House of Lords shows that they were charged with disobedience to the orders of parliament, and with siding with the king in his determination to make war on parliament.

They were sentenced to a refusal of the right to sit or vote in the present parliament, to be deprived of their privileges as members of parliament, and to be imprisoned in the Tower during the pleasure of the House of Lords.

IMPEACHMENT OF THE ARCHBISHOP LAUD, 4 Howell's State Trials 315; 1 Emlyn's State Trials 824; Salmon's Abridgment of State Trials 198 (1642).

Charge: High Treason.

Fourteen specifications of the alleged treason were presented to the Lords, most of which charged other things than treason as at present understood, and subsequently further articles of impeachment were presented against him for "High Treason and divers High Crimes and Misdemeanors."

1. That he "traitorously and maliciously caused the said parliament to be dissolved to the great grievance of his majesty's subjects, and prejudice of this commonwealth."

[5] For information regarding this Impeachment, I am indebted to Cuthbert Headlam, Esq., Secretary of the House of Lords. I have found no report of it elsewhere than in the Journal of the House of Lords, Vol. V, pages 392, 394, 576, 577; Vol. VI, pages 121, 131, 133, and the Journal of the House of Commons, Vol. II, pages 798, 799.

2. That he "hath traitorously endeavoured to subvert the fundamental laws of this realm; and to that end hath in like manner endeavoured to advance the power of the Council-Table, and Canons of the Church, and the king's prerogative, above the laws and statutes of the realm."

3. That he hath "opposed and stopped the granting of his majesty's Writs of Prohibition, where the same ought to have been granted to stay proceedings in the Ecclesiastical Court."

4. That he prevented the proper execution of judgment against a certain person of bad life and conversation.

5. That "being then also a Privy-Counsellor to his majesty, he . . . caused Sir John Corbet of Stoke in the county of Salop, baronet, then a justice of the peace of said county, to be committed to the prison of the Fleet, where he continued prisoner for the space of half a year, or more, for no other cause, than for calling for the Petition of Right and causing it to be read at the Sessions of the peace for that county, upon a just and necessary occasion."

6. "That whereas divers gifts and dispositions of divers sums of money were heretofore made by divers charitable and well-disposed persons, . . . he maliciously caused said gifts, feoffments and conveyances made to the uses aforesaid to be overthrown in his majesty's Court of Exchequer, contrary to law, as things dangerous to the Church and State."

7. That he "hath wittingly and willingly received, harboured and relieved divers Popish Priests and Jesuits, . . . and did also provide maintenance and entertainment for one Monsieur S. Giles, a Popish Priest, at Oxford, knowing him to be a Popish Priest."

8. That he said " 'that there must be a blow given to the Church, such as had not yet been given, before it could be brought to conformity,' declaring thereby his intention to be, to shake and alter the true Protestant Religion established in the Church of England."

9. That he "caused a Synod or Convocation of the Clergy to be held for the several provinces of Canterbury and York, wherein were made and established by his means and procurement divers Canons and Constitutions Ecclesiastical; contrary to the laws of this realm, the right and privileges of parliament, the liberty and property of the subject, tending also to sedition, and of dangerous consequence."

10. That he "wickedly and maliciously advised his majesty to dissolve the said Parliament, and accordingly the same was dissolved; and presently after the said Archbishop told his majesty 'That now he was absolved from all rules of govern-

ment, and left free to use of extraordinary Ways for his Supply.' "

He was convicted, attainted and beheaded.

IMPEACHMENT OF HENRY GREY, EARL OF STAMFORD, AND HIS SERVANTS, HENRY POLTON AND MATTHEW PATSALL[6] (1645).

Charge: "Breach of the Privilege of this House (of Commons) in assaulting Sir Arthur Haselrig, a member of this House."

The single article of impeachment was as follows:

"The said Commons shew, that the said Earl of Stamford, Henry Polton and Matthew Patsall, upon the twentieth day of May, in the year of our Lord God One thousand Six hundred and Forty-five, in the common Highway, leading from Perpoole Lane to Clerkenwell in the County of Middlesex, without any Injury, Offence or Provocation, to them given, and for Matters and Things done in Parliament, did forcibly and unlawfully make an assault upon Sir Arthur Haselrigg, Baronet, a Member of the said House of Commons, then riding, in a peaceable Manner, from the said House of Commons, unto his own Dwelling-house in Islington, in the said County; and being then well known by them the said Earl, Henry Polton, and Matthew Patsall, to be a Member of the said House of Commons; and then and there the said Earl, Henry Polton and Matthew Patsall, did suddenly and unexpectedly, several times thrust and strike the said Sir Arthur Heselrigg, with a drawn Sword, and other offensive Instruments, against the publick Peace of this Kingdom; to the high Breach of the privilege of the said House of Commons, and to the great damage of the said Sir Arthur Haselrigg."

They answered that they were not guilty "in such manner and form as the same are therein charged and alleged."

The two Houses got into a controversy because the Lords decided that Polton might be examined as a witness "there being nothing proved against him and Patsall for Matter of Fact."

Finally the Lords requested a conference with the Commons, which was agreed to, but never held; and nothing further seems to have been done.

[6] For information regarding this Impeachment, I am indebted to Cuthbert Headlam, Esq., Secretary of the House of Lords. I have found no report of it elsewhere than in a note to 6 How. St. Tr. 797; and in the Journal of the House of Lords, Vol. VII, pages 503, 614, 639, 643; Vol. VIII, pages 4, 12, 60, 87; and the Journal of the House of Commons, Vol. IV, pages 150, 152, 188.

IMPEACHMENT OF SIR JOHN GAYRE, MAYOR OF THE CITY OF LONDON; THOMAS CULLAM, ALDERMAN AND ONE OF THE SHERIFFS OF LONDON; JAMES BUNCE, JOHN LANGHAM, AND THOMAS ADAMS, ALDERMAN OF LONDON, *ET AL.*, 4 Howell's State Trials 959; 3 Cobb. Parl. Hist. 877 (1647).

Charge: High Treason.

After various proceedings were had, and before trial, by a formal vote of the Commons and the Lords, it was determined to proceed no further against them and they should be discharged. Accordingly they were discharged.

IMPEACHMENT OF DENZIL HOLLIS, ESQ.; SIR PHILIP STAPYLTON; SIR WILLIAM LEWIS; SIR JOHN CLOTWORTHY; SIR WILLIAM WALLER; SIR JOHN MAYNARD; MAJOR GENERAL MASSEY; JOHN GLYNN, ESQ., RECORDER OF LONDON; WALTER LONG, ESQ.; COL. EDWARD HARLEY, AND ANTHONY NICOLL, ESQ., MEMBERS OF THE HOUSE OF COMMONS, 4 Howell's State Trials 857; 3 Cobb. Parl. Hist. 664 (1647).

Charge: High Crimes and Misdemeanors.

Though called an impeachment by Cobbett, this was in fact a complaint made to the House of Commons "in the name of his Excellency Sir Thomas Fairfax, and the Army under his command." The Articles were 25 in number, and the eleven members made answer thereto in and to the House of Commons. Whereupon July 20, 1647

"This day the commons gave leave to each of the 11 Members, accused by the Army, to follow his own occasions; to as many as desired to go beyond the seas the Speaker was ordered to give passes; the time of the said leave not to exceed six months."

Nothing appears to have been done in the matter, so far as relates to ten of the members, but the next year the Commons sent to the Lords, Articles in the

IMPEACHMENT OF SIR JOHN MAYNARD, 4 Howell's State Trials 914; 3 Cobb. Parl. Hist. 838 (1648).

Charge: High Treason and other High Crimes and Misdemeanors.

1st. "That the said Sir John Maynard hath maliciously and traitorously endeavoured, combined and conspired to subvert the freedom of parliament."

2nd. "That upon . . . divers days . . . he hath maliciously and traitorously, plotted and endeavoured to raise and levy war; and . . . hath maliciously and traitorously,

raised and levied war against the parliament, king and kingdom."

3rd. "That . . . a great company of Reformado officers, soldiers, apprentices, and other dissolute and desperate persons . . . did then and there, contrary to the honour and freedom of parliament, threaten, and for divers hours, imprison the said members so sitting in parliament; . . . and did likewise, then and there, forcibly enter into the said houses of parliament, and forced the members of the said houses to pass such votes as they, the said tumultuous persons, then and there required; and did then and there violently assault the persons of the Speakers and divers members of both houses then attending on the parliament; and, by their violent menaces and assaults, did force the said Speakers, and divers members, from their attendance in parliament; . . . and did traitorously and maliciously plot, contrive and order the raising of another Army to embroil the kingdom in a new and bloody war; and did, traitorously and maliciously . . . order the levying, raising, listing, arming and arraying several forces, both of horse and foot for the maintenance of the said new and bloody war against the king, parliament and kingdom." . . .

4th. "And in further pursuance of the said traitorous designs and purposes, he the said John Maynard, knowing of the said horrid force and violence, did (with others named) . . . order, direct and cause to be raised 18 regiments . . . to be mustered, arrayed, armed and put into a warlike posture, in the said war" . . .

5th. "That, . . . he the said Sir John Maynard . . . and others, in pursuance of his said traitorous plots and contrivances, did traitorously order, command and appoint the raising, seizing and listing of all horses, geldings, and mares . . . to be employed in the said new and bloody war" . . .

6th. "The said Sir John Maynard, with others . . . did traitorously and command the officers of the Ordnance within the Tower of London, to issue 400 barrels of powder, and 4000 muskets, and other arms, ammunition and provisions of war . . . to be employed and used for the army and arraying of the said Reformado officers and soldiers . . . and to be employed for the destruction of said parliament's Army." . . .

7th. "That . . . in pursuance of their said traitorous and malicious designs to embroil the kingdom in a new and bloody war . . . they did . . . cause a declaration . . . reflecting on the authority and freedom of parliament

. . . to be published in all or most of the churches and chapels within London and lines of communication."

He was arrested and committed to the Tower; and upon refusing to submit himself to a trial by the Lords, was fined £500, and "committed to the Tower, there to be kept in safe custody until the pleasure of the house further signified." The proceedings against him were afterwards dropped, and he was restored to his seat in the Commons.

IMPEACHMENT OF JAMES, EARL OF SUFFOLK; FRANCIS, LORD WILLOUGHBY OF PARKHAM; JOHN, LORD HUNSDEN; WILLIAM, LORD MAYNARD; THEOBALD, EARL OF LINCOLN; GEORGE, LORD BERKLEY, AND JAMES, EARL OF MIDDLESEX, 4 Howell's State Trials 984 (1647).

Charge: High Treason.

The Commons abandoned the proceedings and defendants were "forthwith discharged from the restraint they laid under on account of the said impeachment."

IMPEACHMENT OF WILLIAM DRAKE, 5 Howell's State Trials 1364; 4 Cobb. Parl. Hist. 157 (1660).

Charge: "Printing and publishing a false, wicked, malicious and seditious pamphlet."

"The said William Drake in contempt of his majesty's crown and dignity, and of the laws and government of this kingdom, and out of a wicked and malicious intention to scandalize and subvert the authority and being of this present parliament, and to raise and stir up sedition and division in this kingdom . . . hath lately . . . written, printed and published in the name of one Thomas Phillips, gentleman, a certain false, wicked, malicious, and seditious pamphlet intituled 'The Long Parliament Revived.' . . . In which said scandalous and seditious pamphlet the said Drake" made many wicked and untrue expressions alleged to be of the character aforesaid.

The defendant was apprehended and brought before the Lords, "and he, confessing his fault, the Lords, in consideration of the shortness of time for proceeding further in this business, left him to be prosecuted in the King's Bench by the Attorney General; where what further was done with him we know not."

IMPEACHMENT OF EDWARD, EARL OF CLARENDON, LORD HIGH CHANCELLOR OF ENGLAND, 6 Howell's State Trials 291; 4 Cobb. Parl. Hist. 276; Salmon's Abridgment of State Trials 302 (1663).

Charge: High Treason and other High Crimes and Misdemeanors.

1. "That being in a place of highest trust and confidence with his majesty and having arrogated a supreme direction in all his majesty's affairs, both at home and abroad, hath wickedly and maliciously, and with a traitorous intent to draw scandal and contempt upon his majesty's person and to alienate from him the affections of his subjects, abused the said trust," by accusing the king of being inclined to popery, and of assisting the papists.

2. "That in pursuance of the same traitorous design, several near friends and known dependences of his said, aloud, that were it not for my lord chancellor's standing in the gap, popery would be introduced in this kingdom, or words to that effect."

3. "That in pursuance of the aforesaid traitorous design, he has not only advised and persuaded the King to do such things contrary to his own reason and resolutions as might confirm and increase the scandal, . . . but more particularly to allow his name to be used to the pope and several cardinals in the solicitation of a cardinal's cap for the lord of Aubigny, one of his own subjects, and great Almoner at present to his royal consort the queen."

4. "That in pursuance of the same wicked and traitorous design, he had recommended to be employed to the pope one of his own domestics, . . . known to be trusted and employed by him in dispatches and negotiations concerning affairs of great concernment to the nation."

5. "That in pursuance of the said traitorous design he being chief minister of state, did himself write . . . to several cardinals pressing them in the king's name to induce the pope to confer a Cardinal's cap on the said Lord Aubigny, promising, in case it should be attained, exemption to the Roman Catholics of England from the penal laws in force against them."

6. "That in pursuance of the same traitorous design, he has called unto him several priests and Jesuits, . . . to give their help for the obtaining from the pope the Cardinal's cap for the lord Aubigny, as aforesaid, promising great favour to the Papists here, in case it should be effected for him."

7. "That he hath promised to several papists he would do his endeavour, and said, he hoped to compass the taking away all penal laws against them, which he did in pursuance of the traitorous design aforesaid."

8. "That in pursuance of the same traitorous design being entrusted with the treaty betwixt his majesty and his royal consort the queen, he concluded it upon articles scandalous and dangerous to the Protestant religion."

9. "That in pursuance of the same traitorous design, he concluded the same marriage, and brought the king and queen together, without any settled agreement in what manner the rites of marriage should be performed."

10. That "having thus traitorously endeavoured to alienate the affections of his majesty's subjects from him upon the score of religion, he hath endeavoured to make use of all the malicious scandals and jealousies which he and his emissaries had raised in his majesty's subjects, to raise from them unto himself the popular applause of being the zealous upholder of the Protestant religion and a promoter of new severities against Papists."

The charges in this case were presented by the Earl of Bristol and not by the House of Commons, and were referred by the House of Lords "to the Lord Chief Justice; who with all the rest of the judges are to consider whether the said Charge hath been brought in regularly and legally, and . . . whether there be any treason in it or no." The judges reported and the Lords dismissed the articles of impeachment, because they "cannot by the laws and statutes of this realm be originally exhibited by one peer against another unto the House of Lords, . . . and if the matters alleged in the said charge were admitted to be true, although alleged to be traitorously done, yet there is no treason in it."

IMPEACHMENT OF JOHN, LORD VISCOUNT MORDAUNT, 6 Howell's State Trials 786; 4 Cobb. Parl. Hist. 348 (1666).

Charge: High Crimes and Misdemeanors.

1. That he prevented one William Tayleur, a faithful subject of his majesty, from standing "for the election of one of the burgesses of the borough of Windsor, to serve in this present parliament," and did eject him from his residence, arrest and forcibly detain him, "refusing to accept £2000 bail then proffered for his enlargement."

2. That when he was told that said Tayleur "was the king's servant, and had the king's Great Seal for his place as well as he, the said Lord Mordaunt, had for his," in high contempt for his majesty's royal authority and Great Seal, replied: "He would dispose of the said Mr. Tayleur's places, break the Great Seal, and justify what he had done."

3. That he "made sundry uncivil addresses to the daughter of the said William Tayleur, which she rejecting, and threatening to make the viscount's lady acquainted with them, the

said viscount swore, by a most dreadful oath and imprecation, he would persecute her and her family to all eternity."

4. That " by order of the said Viscount Mordaunt, the said William Tayleur was forcibly and illegally dispossessed, by soldiers, of certain rooms in the Timber yard belonging to the said Castle, without the walls thereof, claimed by the said William Tayleur as belonging to his office of paymaster and surveyor of the said castle."

5. "That by a warrant, obtained from his majesty by untrue suggestions and misinformations," he caused again the arrest of the said Tayleur and "continued and illegally detained him prisoner during the space of 20 weeks, and 5 thereof a close prisoner, not permitting him to go to church though he desired it, and locking him up every night, and refused to receive bail for him."

6. "That the said Lord Mordaunt during the said William Tayleur's imprisonment, illegally refused to return and obey an *Habeas Corpus* brought by the said Mr. Tayleur for his enlargement . . . and continued the said Mr. Tayleur divers weeks after a prisoner till set at liberty upon a *Pluries Habeas Corpus,* by his majesty's Court of King's Bench."

7. That he threatened the said William Tayleur that "he would imprison him again and again, and keep him prisoner as long as he lived, and likewise turn him out of all his employments and offices, and dispose of them to others as he pleased, by reason of which threats and menaces the said William Tayleur was enforced to desert wife, family and employments, at the said Borough of Windsor and to obscure himself elsewhere, till this present session of parliament, to prevent future illegal imprisonments by the said viscount."

"But the whole of this dispute was put an end to by the king's . . . proroguing the parliament."

IMPEACHMENT OF LORD CHIEF JUSTICE SIR JOHN KEELING OR KELYNG, 4 Hatsell's Precedents 113 (1667).

Charge: Illegal and Arbitrary Proceedings in his Office.

He was heard in his defence, whereupon the Commons resolved, "That they will proceed no further in the matter against him."

IMPEACHMENT OF EDWARD HYDE, EARL OF CLARENDON, 6 Howell's State Trials 291; 4 Cobb. Parl. Hist. 337 (1667).

Charge: High Treason.

The Lords refused to take him into custody "because the House of Commons have only accused him of treason

in general; and have not assigned or specified any particular treason."

The Commons insisted that a general charge of treason was sufficient. The Lords refused to recede. The Earl fled, and was thereupon banished by Act of Parliament. He died in France.

IMPEACHMENT OF PETER PETT, 6 Howell's State Trials 866; 4 Cobb. Parl. Hist. 408 (1668).

Charge: High Crimes and Misdemeanors.

1. "That the said Peter Pett, being one of the Commissioners of the Navy . . . and having received orders requiring him, in pursuance of his trust, to bring and moor his majesty's ship, called the Royal Charles, and other ships, did contrary to his trust and orders, wilfully neglect and refuse so to do, whereby the said ship . . . became lost, and made a prey to the enemy."

2. On being directed "to cause the ship to be immediately brought up as high as he could, into a place of safety, he the said Pett altogether neglected the doing thereof."

3. "That Captain Brooks . . . knowing (of the) express orders to cause the said Royal Charles to be brought up" prepared so to do; "and desired the said Pett to give him orders for so doing; which he refused so to do."

4. "That his royal highness having given orders to the said Pett to provide and make ready, thirty boats for the defence of the said river and navy; he the said Peter Pett, contrary to his trust, did not only himself misemploy some of the said boats, for the carrying away some of his own particular goods, but suffered the rest to be misemployed and diverted."

5. That being advised "that the Dutch were out, and (given) special charge to command all captains on land to their ships; . . . he the said Pett was so negligent therein, that out of 800 persons or upwards, that were under his care and command, . . . there were not above ten ready upon the invasion of the enemy."

6. "That the said Lord General having appointed soldiers to raise batteries for the defence of his majesty's navy royal, . . . he the said Pett, to obstruct the service, refused to give them the number of tools required for the use aforesaid; notwithstanding he had a sufficient quantity in his majesty's stores."

7. "That the said Lord General . . . sent said orders to the said Peter Pett to send, out of his majesty's yards, some oaken planks for the platforms and batteries to oppose the enemy; he the said Peter Pett sent only deal boards; which were very prejudicial to the service, for that upon the discharge of the guns, the carriages broke through the planks; notwithstanding that

there were in his majesty's yards there several oaken planks, fit for their service."

"It does not appear that this matter proceeded further."

IMPEACHMENT OF SIR WILLIAM PENN, KNIGHT, 6 Howell's State Trials 869; 4 Cobb. Parl. Hist. 409 (1668).

Charge: High Crimes and Misdemeanors.

1. That being Vice Admiral of his majesty's fleet, he "did for his singular lucre, and with intent to share the same, conspire and advise with several persons, to open the holds" of certain of his majesty's "ships, divers and sundry times, before judgment thereof first passed the admiralty court, and from thence to take out and embezzle great quantities of rich goods, whereby his majesty was defrauded to the value of £115,000 or thereabouts, besides great quantities of jewels and other rich commodities, of which no certain estimate can be made."

2. That he conspired with certain people to break open and take out of the ship Slothony, "several bales of silk, mace and other goods to a great value, and carried them away; and afterwards, at several other times, caused the hatchways of said ship to be broken open, after they were closed and sealed up; at every of which times he took and carried away great quantities of rich goods."

3. That "he the said William Penn got a considerable part of the said goods into his possession and converted them to his own use (and later) did sell divers parcels of the said goods, and further warranted the sale thereof."

4. That "the better to colour the said fraud and embezzlement, orders were obtained from the Earl of Sandwich, . . . for the taking and distributing of some of the said goods among several officers, whereof the said Sir William Penn was one; . . . although he the said Sir William Penn very well knew that the said orders of him the said Earl of Sandwich were void, . . . and afterward a warrant . . . was unduly procured from his majesty for distributing the said goods, whereas in truth he the said Sir William Penn had before the said warrant of his majesty, possessed himself of divers of the said goods, and sold and warranted the same."

Penn filed his answer, a copy thereof was sent to the House of Commons, which referred the answer to a committee, but "it does not appear that this committee made any report, or that this matter proceeded further."

IMPEACHMENT OF THE EARL OF ORRERY, 6 Howell's State Trials 913; 4 Cobb. Parl. Hist. 434 (1669).

Charge: High Crimes and Misdemeanors.

No formal articles appear in the report, but it said that they contained "in substance, raising of money by his own authority, upon his majesty's subjects; defrauding the king's subjects of their estates. The money raised was for bribing hungry courtiers to come to his ends, and if the king would not, he had 50,000 swords to compel him."

The earl filed an answer to the articles, which is set forth in the report.

The Commons then "resolved, 'that this accusation against the Earl of Orrery be left to be prosecuted at law.' "

IMPEACHMENT OF THE EARL OF ARLINGTON, PRINCIPAL SECRETARY OF STATE, 4 Hatsell's Precedents 138; 4 Cobb. Parl. Hist. 650 (1673).

Charge: "Treasonable and other Crimes of High Misdemeanors."

Articles were prepared by the Commons but are not given in the report.

What was afterwards done does not appear, except that testimony was taken by a committee of the House of Commons.

IMPEACHMENT OF HENRY BENNETT, EARL OF ARLINGTON, PRINCIPAL SECRETARY OF STATE, 6 Howell's State Trials 1053; 4 Cobb. Parl. Hist. 658 (1673).

Charge: "Treason and other High Crimes and Misdemeanors."

1st. "That the said earl hath been a constant, and most vehement promoter of Popery and Popish counsels. 1. By procuring commissions for all the Papists lately in command, and who made their applications to him, as a known favourer of that faction. . . . 2. By procuring his majesty's letter, commanding Irish Papists and rebels to be let into corporations, and admitted into the commissions of the peace, and other offices of trust military and civil, contrary to (law). . . . 3. By not only setting up and supporting the Papists there, but bringing the most violent and fiercest of them to command companies and regiments. . . . 4. By openly and avowedly entertaining and lodging in his family a Popish priest. . . . 5. By procuring pensions, in other men's names, for Papist officers . . . 6. By obtaining several grants of considerable sums of money, to be charged upon the revenue of Ireland, for the

most violent and pernicious Papists there. . . . 7. By procuring his majesty to release several Irish Papists." . . .

2nd. "That the said earl hath been guilty of many and undue practices to promote his own greatness; and hath embezzled and wasted the treasure of the nation. 1. By procuring vast and exorbitant grants for himself. . . . 2. By charging excessive and almost incredible sums for false and deceitful intelligence. 3. By procuring his majesty's hand for the giving away, between his first entrance into his office, the value of 3 millions of sterling money at the least. 4. That the said earl . . . hath causelessly and illegally imprisoned many of his majesty's subjects. 5. That he did procure a principal peer of this realm to be imprisoned, and to be proclaimed traitor, without any legal proceed or trial; and did maliciously suborn false witness, with money, to take away his life, upon pretence of treasonable words."

3rd. "That the said earl hath falsely and traitorously betrayed the great trust reposed in him, by his majesty, as counsellor and principal Secretary of State. 1. By entertaining a more than usual intimacy with the French ambassador. . . . 2. By altering in private, and singly by himself, several solemn determinations of his majesty's councils. 3. By procuring a stranger to have the chief command of the late raised army, for invasion of Holland. . . . 4. By advising his majesty to admit of a squadron of French ships to be joined with our English fleet. . . . 5. Whereas the king was advised by several of his council to press the French king to desist from making any further progress in his conquest of the inland town of Holland . . . his lordship gave the king counsel to desist. . . . 7. When the French ships were dispersed after the late fight at sea, and had lost their anchors and cables . . . he persuaded his majesty to send them fourscore cables and anchors. . . . 8. He hath traitorously corresponded with the king's enemies. . . ."

The earl was heard in person before the House of Commons, whereupon the matter was "referred to a committee, and that they report what matter is therein contained, and can be proved, that is fit for an impeachment."

"Nothing further appears to have been done in this accusation."

IMPEACHMENT OF THE FIVE POPISH LORDS, VIZ.: THE EARL OF POWIS, LORD VISCOUNT STAFFORD, LORD PETRE, LORD ARUNDEL OF WARDOUR, AND LORD BELLASYSE, 7 Howell's State Trials 1218; 3

Emlyn's State Trials 101; Salmon's Abridgment of State Trials 396 (1678).

Charge: High Treason.

This appears to be the first case in which the proper practice at the trial is set forth. Lord Stafford was convicted and executed. The impeachments as to the other four lords were annulled and they and their bail discharged.

IMPEACHMENT OF SIR FRANCIS NORTH, CHIEF JUSTICE OF THE COURT OF COMMON PLEAS, 8 Howell's State Trials 211; 4 Cobb. Parl. Hist. 115; 4 Hatsell's Precedents 115 (1680).

Charge: High Crimes and Misdemeanors.

It was alleged that he "was advising and assisting in the drawing and passing of 'A Proclamation Against Tumultuous Petitions.'" Evidence was taken before the Commons, which decided that there "is sufficient ground for this House to proceed upon an impeachment against him," and the heads of an impeachment were ordered to be prepared. Later the committee having in charge the matter of the impeachment against him, Sir Thomas James, one of the justices of the Court of King's Bench, and Sir Richard Weston, one of the barons of the Court of Exchequer, were ordered to bring in such impeachments with all convenient speed.

What, if anything, was done thereafter, does not appear.

IMPEACHMENT OF RICHARD PORE, EARL OF TYRONE, 4 Hatsell's Precedents, 118, 397 (1680).

Charge: High Treason.

"No articles brought up. The parliament prorogued two days after; so no further proceedings."

IMPEACHMENT OF EDWARD SEYMOUR, ESQ., A MEMBER OF THE HOUSE OF COMMONS AND TREASURER OF THE NAVY, 8 Howell's State Trials 127; 4 Cobb. Parl. Hist. 1222 (1680).

Charge: High Crimes, Misdemeanors and Offences.

1st. "That, whereas the sum of £584,978, 2s. 2d. was raised by an act of parliament for the speedy building of 30 ships of war . . . by which act it was particularly directed, 'That the treasurer of the navy should keep all moneys paid to him by virtue of said act, distinct and apart from all other moneys . . .' the said Edward Seymour . . . being then treasurer of the navy, did, contrary to the said act, and contrary to the duty of his said office lend the sum of £90,000 at 8 per cent.,

parcel of the said sum, raised by the said act, being then in his hands, for and towards the support and continuance of the army then raised, after such time as by an act of parliament the said army ought to have been disbanded."

2nd. "That, whereas an act of parliament had passed for raising money by a poll, for enabling his majesty to enter into an actual war against the French king . . . and whereas certain Eastland merchants were desired by his majesty's officers to furnish and support great quantities of stores for the navy, and, as an encouragement thereunto, were assured that the sum of £40,000 parcel of the said moneys raised by the said act, was at that time actually in the hands of the said Edward Seymour; which he did acknowledge so to be, and did promise that the said sum should be paid to the said merchants, in part of satisfaction for the said stores, which they did furnish upon the credit of the same affirmation and undertaking: He, the said Edward Seymour, did, . . . issue out and pay the said sum to the victuallers of the navy, by way of advance, and for provisions not then brought in, contrary to the true intent and meaning of the said act."

3rd. "That the said Edward Seymour, being treasurer of the navy and . . . Speaker of the late Long Parliament (did) receive out of the moneys appropriated for secret service, the yearly sum of £3000 over and above his . . . salary which was constantly paid to him, as well during the intervals as the sessions of parliament."

4th. That "during a war with the States-general of the United Netherlands, he, the said Edward Seymour, being then one of the commissioners for prize goods, did fraudulently, unlawfully, and in deceit of his majesty, unlade a certain prize ship, taken from the subjects of the said states, without any order or authority from the same; . . . and did afterwards sell the same, pretending the same to have been only Muscovado Sugars, and did account with his majesty for the same as such; whereas, in truth, the said ship was laden with Cochineal and Indigo, rich merchandizes of a great value."

Answers were duly filed and a date for trial fixed.

"Two days after this the parliament was prorogued by his majesty to the 20th of January and soon after was dissolved."

IMPEACHMENT OF LORD CHIEF JUSTICE SCROGGS AND OTHER JUDGES, 8 Howell's State Trials 163; 4 Cobb. Parl. Hist. 1274; 7 Emlyn's State Trials 479 (1680).

Charge: "High Treason and other great Crimes and Misdemeanors."

1st. "That he the said William Scroggs, then being Chief Justice of the Court of King's Bench, hath traitorously and wickedly endeavoured to subvert the fundamental laws, and the established religion and government of this kingdom of England; and, instead thereof, to introduce Popery, and arbitrary and tyrannical government against law."

2nd. That he "in pursuance of his said traitorous purposes, did, together with the rest of the justices of the same court . . . in an arbitrary manner, discharge the Grand Jury . . . before they had made their presentments, or had found several bills of indictment, which were then before them: . . . by which sudden and illegal discharge of the said jury, the course of justice was stopped maliciously and designedly; the presentments of many Papists, and other offenders, were obstructed; and, in particular, a bill of indictment against James, Duke of York, for absenting himself from church, which was then before them was prevented from being proceeded upon."

3rd. "That, whereas one Henry Carr had, for some time before, published every week a certain book . . . wherein the superstitions and cheats of the Church of Rome, were from time to time exposed; he the said Sir William Scroggs, then Chief Justice of the Court of King's Bench, together with the other judges of the said court, before any legal conviction of the said Carr of any crime, did . . . in a most illegal and arbitrary manner, make, and cause to be entered, a certain rule of that court against the printing of the said book . . . and did cause the said Carr, and divers printers and other persons to be served with the same; which said rule and other proceedings were most apparently contrary to all justice, in condemning not only what had been written without hearing the parties, but also all that might for the future be written on that subject; a manifest countenancing of Popery and discouragement of Protestants, an open invasion upon the rights of the subject, and an encroaching and assuming to themselves a legislative power and authority."

4th. "That he, the said Sir William Scroggs, since he was made Chief Justice of the King's Bench, hath, together with the other judges of the said court, most notoriously departed from all rules of justice and equality, in the imposition of fines upon persons convicted of misdemeanors in the said court . . . but have been manifestly partial and favorable to Papists, and persons affected to, and promoting the Popish interest, in this

time of imminent danger from them; and at the same time have most severely and grievously oppressed his majesty's Protestant subjects; . . . by which arbitrary, injurious and partial proceedings, many of his majesty's liege-people have been ruined, and Popery countenanced under colour of justice; and all the mischiefs and excesses of the court of Star Chamber, by act of parliament suppressed, have been again, in direct opposition of the said law, introduced."

5th. "That he the said William Scroggs, for the further accomplishing of his said traitorous and wicked purposes, and designing to subject the persons, as well as the estates of his majesty's liege people, to his lawless will and pleasure, hath frequently refused to accept of bail, though the same were sufficient, and legally tendered to him by many persons accused before him only of such crimes for which by law bail ought to have been taken, and divers of the said persons being only accused of offences against himself; . . . which proceedings . . . are a high breach of the liberty of the subject, destructive of the fundamental laws of this realm, contrary to the Petition of Right, and other statutes; and do manifestly tend to the introducing of arbitrary power."

6th. "That he . . . hath, since his being made Chief Justice of the said court of King's Bench, in an arbitrary manner, granted divers general warrants for attaching the persons and seizing the goods of his majesty's subjects, not named or described particularly in the said warrants: By means whereof many of his majesty's subjects have been vexed, their houses entered into, and they themselves grievously oppressed, contrary to law."

7th. "Whereas there hath been a horrid and damnable plot contrived and carried on by the Papists, for the murdering the king, the subversion of the laws and government of this kingdom, and for the destruction of the Protestant religion; . . . nevertheless, the said Sir William Scroggs did . . . openly defame and scandalize several of the witnesses, who have proved the said treasons, . . . and did endeavour to disparage their evidence, and take off their credit; whereby, as much as in him lay, he did traitorously and wickedly suppress and stifle the discovery of the said Popish Plot."

8th. That "the said Sir William Scroggs being advanced to be Chief Justice . . . by his frequent and notorious excesses and debaucheries and his profane and atheistical discourses, doth daily affront Almighty God, dishonour his majesty, give countenance and encouragement to all manner of vice and wickedness,

and bring the highest scandal on the public justice of the kingdom."

An answer was filed, but the case was not tried, parliament being shortly afterwards dissolved.

IMPEACHMENT OF EDWARD FITZHARRIS, 8 Howell's State Trials 224; Salmon's Abridgment of State Trials 409 (1681).

Charge: High Treason.

No formal articles appear to have been filed against him, but the House of Lords resolved that he "should be proceeded with according to the courts of common law and not by way of impeachment in parliament at this time."

Thereupon the House of Commons "resolved, that it is the undoubted right of the Commons in parliament assembled, to impeach before the Lords in Parliament, any peer or Commoner for treason or any other crimes or misdemeanors; and that the refusal of the Lords to proceed in parliament upon such Impeachment is a denial of justice, and a violation of the constitution of parliaments. . . .

"Resolved, that for any inferior court to proceed against Edward Fitzharris, or any other person lying under an impeachment in parliament for the same crimes for which he or they stand impeached, is a high breach of the privilege of parliament."

"Immediately after these proceedings . . . the parliament was dissolved."

He was subsequently indicted for high treason, convicted and executed.

IMPEACHMENT OF THOMAS, EARL OF DANBY, AND LORD HIGH TREASURER OF ENGLAND, 11 Howell's State Trials 600; 4 Cobb. Parl. Hist. 693; Salmon's Abridgment of State Trials 330 (1678).

Charge: "High Treason and other High Crimes and Misdemeanors."

1. "That he hath traitorously encroached to himself Regal Power, by treating in matters of peace and war with foreign ministers and ambassadors, and giving instructions to his majesty's ambassadors abroad, without communicating the same to the secretaries of state, and the rest of his majesty's council."

2. "That he hath traitorously endeavoured to subvert the ancient and well established form of government in this kingdom, and instead thereof to introduce an arbitrary and tyrannical way of government."

3. "That he traitorously intending and designing to alienate the hearts and affections of his majesty's good subjects from his royal person and government, and to hinder the meetings of parliaments, and to deprive his sacred majesty of their safe and wholesome counsel, and thereby to alter the constitution of the government of this kingdom, did propose and negotiate a peace for the French king, upon terms disadvantageous to the interest of his majesty and his kingdoms."

4. "That he is Popishly affected, and hath traitorously concealed (after he had notice) the late horrid and bloody Plot and conspiracy, contrived by the Papists against his majesty's person and government."

5. "That he hath wasted the king's treasure, by issuing out of his majesty's exchequer several branches of his revenue for unnecessary pensions and secret services, to the value of £231,602 within two years; and that he hath wholly diverted out of the known method and government of the exchequer, one whole branch of his majesty's revenue to private uses, without any account to be made of it to his majesty."

6. "That he hath by indirect means procured from his majesty to himself divers considerable gifts and grants of inheritance of the ancient revenue of the crown, even contrary to acts of parliament."

He pleaded a pardon of the king, the efficacy of which the Commons denied, and demanded that the Lords proceed to trial. Knowing and hearing of that demand the king appeared in person and prorogued and afterwards dissolved parliament.

The earl, however, remained in prison in the Tower, from which he was released on *Habeas Corpus* by the Court of King's Bench, upon entering bail in the sum of £40,000 upon condition that he "appear in the House of Lords the next session of parliament and not depart without leave of that court."

The case, however, was never brought to trial.

IMPEACHMENT OF SIR ADAM BLAIR, CAPTAIN HENRY VAUGHAN, CAPTAIN FREDERICK MOLE, JOHN ELLIOTT, DOCTOR IN PHYSIC, AND ROBERT GRAY, DOCTOR IN PHYSIC, 12 Howell's State Trials 1208; 5 Cobb. Parl. Hist. 360 (1689).

Charge: High Treason.

The defendants were not tried. Parliament was dissolved, and the question was left open for consideration "Whether Impeachments continued from Parliament to Parliament." In the next session of parliament, the defendants "were, upon their own petition, discharged from their bail."

IMPEACHMENT OF JAMES, EARL OF SALISBURY, AND HENRY, EARL OF PETERSBOROUGH, 12 Howell's State Trials 1234 (1689).

Charge: High Treason.

Parliament having been dissolved before the case was tried, the defendants were admitted to bail, and the next parliament discharged them from their bail, which ended the proceeding.

IMPEACHMENT OF THOMAS, LORD CONINGSBY AND SIR CHARLES PORTER, 12 Howell's State Trials 1280; 5 Cobb. Parl. Hist. 816 (1693).

Charge: High Treason.

The House of Commons refused, by formal vote, to proceed with the impeachment, which had been presented to it by the Earl of Bellamont.

IMPEACHMENT OF THOMAS, DUKE OF LEEDS, 13 Howell's State Trials 1263; 5 Cobb. Parl. Hist. 937 (1695). .

Charge: High Crimes and Misdemeanors.

1st. That he did "corruptly and illegally treat, contract and agree, with (certain) merchants or their agents, for 5500 guineas to procure (for them a) charter of confirmation, and also a charter of regulations, or to use his endeavours to obtain the same."

2nd. "That in pursuance of said corrupt contract and agreement (he) did . . . receive or accept, from the said merchants or their agents, certain notes or securities whereby he or they were empowered to receive said 5500 guineas upon the passing of the said charters."

3rd. That 2500 guineas "part of the said 5500; and soon after the passing of the said charter of regulations, the further sum of 3000 guineas, other part of said 5500 guineas (were) actually received by the said duke of Leeds or by his agents or servants, with his privity and consent."

The duke answered the articles, and the matter was unacted upon by the House of Commons during two parliaments, whereupon the House of Lords ordered "That the said impeachment and the articles exhibited against him, be dismissed."

IMPEACHMENT OF JOHN GOUDET, DAVID BARRAN, PETER LONGUEVILLE, STEPHEN SEIGNORTT, RENE BANDOVIN, NICOLAS SANTINI AND PETER DIHARCE, MERCHANTS, AND JOHN PIERCE, GENTLEMAN, 5 Cobb. Parl. Hist. 1175 (1698).

Charge: High Crimes and Misdemeanors.

1st. "That (they and others named) . . . not weighing or considering the protection and privileges they have enjoyed under the government, nor any ways regarding the many good and wholesome laws and statutes, made for encouraging the manufactures, and preventing the exportation of the coin and wool of this kingdom; . . . but minding and intending, for their own private lucre and advantage, to render all those good and beneficial laws of no force and effect; did associate, combine, and confederate, with . . . divers other evil disposed persons, to carry on a traffic with France, during the late war; thereby to exhaust the treasure of this nation, to lessen the value of the native commodities, and to destroy the manufactures thereof, to the general detriment of this kingdom."

2nd. "That, to compass and effect these their pernicious designs and intentions, they . . . did, during the said war, set up, and carry on, a Correspondence with several persons in France, and give intelligence to the enemy, of the state and condition of this realm."

3rd. "That they . . . did, during the said war, import, and cause to be imported, into this kingdom, several great quantities of goods and commodities, of the growth, product, and manufacture of France."

4th. "That they . . . by the same vessels which imported the said French goods, did export, and cause to be exported, and carried into France, great quantities of the wool grown in this kingdom."

5th. "That they . . . did privily convey, and cause to be conveyed, from justice, divers criminals out of this kingdom."

6th. "Whereas . . . divers good and wholesome laws have been made, that no person should presume to deal in black alamodes or lustrings, not having the mark or seal on them, used for foreign goods at the custom house, or the seal or mark used by the lustring company; . . . for the more easy vending and uttering of the said alamodes and lustrings, which they had so fraudulently imported from France, did make and counterfeit, and cause to be made and counterfeited, divers seals and marks used for foreign goods at the custom house; and did affix several of the said counterfeit seals and marks to divers pieces of alamodes and lustrings, imported from France, as aforesaid."

Answers were filed, and afterwards "eight of them confessed themselves guilty" and were fined £1000 to £10,000 each, and it was

"ordered that they should be imprisoned in Newgate, until they had paid their respective fines."

Peter Longueville, the other defendant, is not mentioned in the judgment or sentence.

(In 4 Haskell's Precedents 236, 256-260, this impeachment is spoken of as of *William* Goudet *et al.*)

IMPEACHMENT OF JOHN AURIOLL AND JOHN DU MAISTRE,[7] (1698).

Charge: High Crimes and Misdemeanors.

1st. "That the said John Dumaistre and John Aurioll, not weighing or considering the protection and privileges they have enjoyed under this government, nor any ways regarding the many good and wholesome laws and statutes made for encouraging the manufactures, and preventing the exportation of the coin and wool of this kingdom, and the holding Correspondence with France during the late war; but minding and intending, for their own private lucre and advantage, to render all those good and beneficial Laws of no Force and Effect; did . . . associate, combine, and confederate, with Stephen Seignoret, John Goudet, Ferdinand Ravand, Peter Barrailleau, and divers other evil-disposed Persons, to carry on a traffic with France during the late war, thereby to exhaust the treasure of this Nation, to lessen the Value of the native Commodities, and to destroy the Manufactures thereof, to the general Detriment of the Kingdom."

2nd. "That, to compass and effect these their pernicious Designs and Intentions, they the said John Dumaistre and John Aurioll did, during the said war, set up and carry on a Correspondence with several Persons in France."

3rd. "That they the said John Dumaistre and John Aurioll did during the said war, import, and cause to be imported, into this Kingdom, several great Quantities of Goods and Commodities of the Growth, Product, and Manufacture of France."

Aurioll went to Holland, Du Maistre was arrested, pleaded guilty and was fined £1000, and ordered to be imprisoned in Newgate, until the fine was paid.

IMPEACHMENT OF WILLIAM, EARL OF PORTLAND, 14 Howell's State Trials 234; 5 Emlyn's State Trials 339; Salmon's Abridgment of State Trials 744 (1701).

Charge: High Crimes and Misdemeanors.

He was formally impeached at the bar of the Lords on April 1, 1701, but no Articles of Impeachment having been presented by the Commons up to June 24, 1701, the Lords on that day ordered

[7] For information regarding this Impeachment, I am indebted to Cuthbert Headlam, Esq., Secretary of the House of Lords. I have found no report of it elsewhere than in a note in 14 How. St. Tr. 276, and in the Journals of the Lords and Commons.

"That the Impeachment against William, Earl of Portland, shall be, and it is hereby dismissed, there being no Articles exhibited against him."

IMPEACHMENT OF EDWARD, EARL OF OXFORD, 14 Howell's State Trials 241; 5 Cobb. Parl. Hist. 1257; 5 Emlyn's State Trials 339; Salmon's Abridgment of State Trials 744 (1701).

Charge: High Crimes and Misdemeanors.

1st. That "the said Earl being then of his majesty's most honorable privy council . . . in violation of his duty and trust, hath procured from his majesty one or more grant or grants, of several manors, messuages, lands, tenements, and hereditaments, within the kingdoms of England and Ireland, or elsewhere within his majesty's dominions . . . of a great yearly value . . . to his own use, the profits whereof he now enjoys; whereby the standing revenues of the crown of England, which ought to be applied to the service of the public, are greatly diminished, and the people of England thereby burdened with debts, and subjected to grievous taxes."

2nd. "That in breach of the trust reposed in him . . . the said Earl did receive great sums of the public money, issued out to him for the service of the navy, which he hath converted to his own private use."

3rd. That he "did receive from the said King (of Spain) and others, considerable sums of money, and great quantities of wine, oil, and other provisions for the fleet to a very great value, for all which he ought to have accounted; but the said Earl did convert the same to his own use."

4th. That he "hath clandestinely, contrary to the law of nations, sold and disposed of several vessels, with their ladings and cargo taken, under pretence of prize, by his majesty's ships of war, without condemnation or judicial proceedings, and converted the money to his own use."

5th. That he "did procure a commission for one William Kidd, . . . known to be a person of ill fame and reputation, ordered (him) to pursue the intended voyage, in which he did commit divers piracies and depredations on the high seas, being thereto encouraged through the hopes of being protected by the high station and interest of the said Earl, in violation of the law of nations, and the interruption and discouragement of the trade of England."

6th. That when "the kingdom was under an apprehension of an immediate invasion from France, . . . (he) did his

utmost endeavour to prejudice and weaken the navy royal of England."

7th. That "when ships, men and money were wanting to guard the seas and protect our trade (he) did by misrepresentations, and contrary to his bounden duty, . . . procure a grant or order for his majesty's ship the Dolphin, then fitted out, manned and equipped for the service of the public, to be employed in a private voyage and undertaking, for the advantage of himself and others concerned with him."

8th. "That the said Earl during the time of his commanding the navy royal of England, did, through neglect and in contempt of orders, unnecessarily hazard and expose to imminent danger the said navy, and . . . having had many opportunities of taking and destroying the ships belonging to the French king, the said Earl, contrary to advice, in disobedience to orders, and in neglect of his duty, did suffer and permit the said ships to return safe into their own harbours."

9th. That "the said Earl, well knowing our sovereign lord the king to have been engaged in several alliances . . . the end and intention of all which . . . were to prevent the growth of the power of the French king, and to secure England, and the ancient allies of England, against the same; did notwithstanding, in concert with other false and evil counsellors, advise our said sovereign lord the king, in the year 1698, to enter into one treaty for dividing the monarchy and dominions of Spain whereby . . . a large part of the said Spanish dominion were to be added to the crown of France."

(See second case hereafter for the result of this impeachment.)

IMPEACHMENT OF JOHN, LORD SOMERS, 14 Howell's State Trials 250; 5 Cobb. Parl. Hist. 1266; 5 Emlyn's State Trials 339; Salmon's Abridgment of State Trials 744 (1701).

Charge: High Crimes and Misdemeanors.

1st. "That in 1698, a treaty was projected and contrived in France . . . for a partition of the Spanish Monarchy; whereby many large territories, thereunto belonging, were to be allotted and delivered up to France: That the tenour and design of the said last mentioned treaty . . . was communicated to the said John Lord Sommers, then one of the lord justices of England, lord chancellor of England, and one of his majesty's most honourable privy council: That the said Lord Sommers, well knowing the most apparent evil consequences, as well as the

injustices of the said partition," and that its consummation would be in violation of other treaties made by England, "did advise his majesty to enter into the said treaty and did so far encourage and promote the same that the treaty was concluded and ratified under the great seal of England, then in the custody of the said Lord Sommers."

2nd. "That for the most effectual carrying on the said treaty, one or more commission or commissions was or were prepared, amended, enlarged or altered by the said Lord Sommers without any lawful warrant for his so doing; . . . and in violation of the great trusts reposed in him, . . . without communicating the same to the rest of the then lord justices of England, or advising in council with his majesty's privy council thereupon, did presume to affix the great seal of England" thereto.

3rd. "That the said Lord Sommers contrary to the duty of his said office of lord chancellor, did affix the great seal of England to the said commission or commissions, not having received any lawful warrant for that purpose."

4th. That he "contrary to the duty of his several offices, affixed the great seal of England to the ratification of the said treaty, . . . not having first communicated the same to the rest of the then lords justices of England, or advised in council with his majesty's privy council thereupon."

5th. That he concluded another treaty which was "evidently destructive of the trade of this realm, dishonourable to his majesty, highly injurious to the interest of the Protestant religion, and manifestly tended to disturb the general peace of Europe, by altering the balance of power therein, and strengthening France against the good friends and ancient allies of our sovereign lord the king."

6th. That he "did not enroll or enter of record or cause to be enrolled or entered of record any of the said commissions or ratifications . . . as by the duty of his place he should and ought to have done."

7th. That "whilst this nation was engaged in a tedious and most expensive war against the French king, . . . almost exhausted with supplies and taxes for carrying on the same, and under such heavy debts, as without the utmost frugality, or laying insupportable taxes on the Commons of England, were impossible to be satisfied, contrary to his said oath (he) did pass many great unreasonable and exorbitant grants, under the great seal of England, of divers manors, lordships, lands, tenements, hereditaments, revenues and interests, belonging to the crown of England, amounting to a most prodigious and excessive value."

8th. "That the said Lord Sommers, during the time of his being lord keeper of the great seal and lord chancellor of England, did not only receive and enjoy the fees, profits and perquisites of or belonging to the great seal . . . but also . . . an annual pension or allowance from the crown of £4000 and many other profits and advantages; notwithstanding which, the said Lord Sommers begged and procured for his own benefit many great unreasonable, and exorbitant grants of several manors, lands, tenements, rents, hereditaments and revenues, belonging to the crown of England."

9th. That among others he did "procure a grant of . . . fee-farm rents for his own benefit, whilst he was lord chancellor of England, and one of his majesty's most honourable privy council, whilst his majesty was engaged in the said war, and the nation under such heavy debts as aforesaid."

10th. "That . . . there was not any sum of money really and *bona fide* paid as a consideration of the conveyance of the said rents, . . . such contracts and payments of the several considerations, amounting in the whole to £33,600 were colourably and fraudulently contrived and made by the direction of the said Lord Sommers."

11th. He caused many "quit rents, copyhold rents" to be conveyed to certain named persons, "to the great vexation and oppression of many of his majesty's good subjects, and creating many new and unreasonable charges on the revenues of the crown."

12th. "That being then lord chancellor and one of his majesty's most honourable privy council, in breach of his duty, and contrary to the laws and statutes of the realm (he) procured other rents . . . to be conveyed to Rd. Adny. and his heirs . . . in trust for the said Lord Sommers and his heirs."

13th. That while holding said offices he "procured a commission to be granted unto one William Kidd, a person of ill fame and reputation, and since that time convicted of piracy, to apprehend, and take into his custody, divers persons therein named, and . . . procured a grant from his majesty, and the said Lord Sommers passed the same, under the great seal of England" of the ships and cargo taken by said Kidd to Samuel Newton and others, "in which grant, the name of said Samuel Newton was ward in trust, and for the only benefit and advantage of the said Lord Sommers."

14th. "That the said John Lord Sommers, . . . by colour of his office, hath made divers arbitrary and illegal orders, in subversion of the laws and statutes of this realm; and hath,

of his own authority, reversed judgments given in the court of Exchequer, and without calling before him the barons of the Exchequer to hear their informations, and the causes of their judgments, as the statute, in those cases, expressly directs; assuming thereby to himself an arbitrary and illegal power."

(See next case for the result of this impeachment.)

IMPEACHMENT OF CHARLES, LORD HALIFAX, 14 Howell's State Trials 293; 5 Cobb. Parl. Hist. 1299; 5 Emlyn's State Trials 339 (1701).

Charge: High Crimes and Misdemeanors.

1st. That "being a member of the honourable House of Commons, one of the lords of the treasury, chancellor of the Exchequer, and one of his majesty's most honourable privy council . . . (he) presumed to advise, pass, or direct the passing, a grant to Thomas Railton, Esq., in trust for himself, of several debts, interest, sums of money, amounting in the whole to the sum of £13,000 or thereabouts, due, owing, and which ought to have accrued to his majesty, by reason of the attainders, outlawries, or other forfeitures of the respective persons for whom the same were entered on record, whereby he hath much contributed to the contracting great debts upon the nation, heavy taxes upon the people, hath reflected upon his majesty's honour, and failed in the performance of his trust and duty."

2nd. That he "procured for Thomas Railton, Esq., in trust for himself, a grant of several debts, by judgments and otherwise, to several of the said forfeiting persons, amounting to the sum of £13,000 or thereabouts, forfeited to his majesty by the attainder, outlawries, or other forfeitures, of the respective persons to whom such debts were originally due, and by notice of the said grant, the said Lord Halifax actually received to his own use the sum of £1000 part" thereof which he should have repaid to his "majesty's Exchequer in Ireland," but did not.

3rd. That "when the nation was engaged in a tedious and expensive war against France, . . . and under such heavy debts as, without laying unsupportable taxes on the people, were impossible to be satisfied (he did) advise, procure and assent, not only to the passing of divers grants to others in England and Ireland, but did obtain and accept of several beneficial ones to or in trust for himself."

4th. "Whereas . . . it appears to have been the great care of our ancestors, that the king's forests should be preserved, and in particular the timber therein growing, for the building and repairing the navy royal (nevertheless he did) procure from his

majesty a grant to Henry Segar, gentleman, in trust for himself, of the sum of £14,000 of so much scrubbed beech, birch, holly, hazle, thorns and orle, as should by sale raise the said sum of £14,000 to be fallen in his majesty's forest of Dean, . . . under colour of which grant beech of a much greater value, great numbers of sapling oaks, which might have been serviceable to the realm, and also many trees of well grown timber, fit for the present use of the navy, have been cut and fallen, and sold and disposed of for the benefit of the said Lord Halifax."

5th. That he "did grant, or procure the granting to Christopher Montagu, Esq., the brother of him the said Charles Lord Halifax, and then one of the commissioners of the excise, the said place and office of auditor of the receipts and writer of the tallies; which said grant was so made and procured by the said Lord Halifax in trust, as to the profits thereof, for himself . . . very much to the great loss and prejudice of his majesty and the public, by opening a way to all manner of corrupt practices in the future management of the revenues."

6th. That he advised his majesty to enter into a treaty "for a partition of the Spanish monarchy, whereby many large territories . . . were to be allotted and delivered up to France, in violation of existing treaties with other nations . . . which treaty was evidently destructive of the trade of this realm, a breach of the former treaty, . . . dishonourable to his majesty, highly injurious to the interest of the Protestant religion, and manifestly tended to disturb the general peace of Europe, by altering the balance of power therein, and strengthening France against the good friends and ancient allies of our sovereign lord the king."

The several defendants answered the articles.

The Commons then requested the Lords to appoint a committee to co-operate with a like committee of the Commons, "to settle and adjust the necessary preliminaries to the trial; particularly, Whether the impeached lords should appear in their trial at your lordship's bar as criminals? Whether being under accusations of the same crimes, they should sit as judges on each other's trials for those crimes, or should vote on their own cases, as it is notorious they have been permitted by your lordships to do in many instances which might be given?"

The Lords refused the request and fixed a day for the trial.

The Commons, by formal resolution, refused to permit any of its members to appear at the trial.

The Lords then heard counsel for the defendants, and acquitted them, and dismissed the impeachments.

IMPEACHMENT OF HENRY SACHEVERELL, D. D., 15 Howell's State Trials 1; 6 Cobb. Parl. Hist. 809; 5 Emlyn's State Trials 641; Salmon's Abridgment of State Trials 816 (1710).

Charge: High Crimes and Misdemeanors.

1st. "He the said Henry Sacheverell, in his said sermon preached at St. Paul's, doth suggest and maintain, 'That the necessary means used to bring about the said happy revolution, were odious and unjustifiable: That his late majesty in his Declaration, disclaimed the least imputation of resistance: And that to impute resistance to the said revolution, is to cast black and odious colours upon his late majesty and the said revolution.'"

2nd. That in said sermon he preached, "That the foresaid Toleration granted by law is unreasonable, and the allowance of it unwarrantable: And asserts, that he is a false brother with relation to God, religion, or the church who defends Toleration and Liberty of Conscience."

3rd. That in said sermon he "doth falsely and seditiously suggest and assert, that the Church of England is in a condition of great peril and adversity under her majesty's administration; and in order to arraign and blacken the said vote or resolution of both houses of parliament . . . doth suggest the Church to be in Danger; and as a parallel, mentions a vote, that the person of King Charles I was voted to be out of danger, at the same time that his murderers were conspiring his death; thereby wickedly and maliciously insinuating that the members of both houses, who passed the said vote, were then conspiring the ruin of the church."

4th. That he, "in his said sermons and books, doth falsely and maliciously suggest, that her majesty's administration, both in ecclesiastical and civil affairs, tends to the destruction of the constitution: . . . (and) persuades her majesty's subjects to keep up a distinction of factions and parties; instils groundless jealousies, foments destructive divisions among them, and excites and stirs them up to arms and violence."

He was convicted, enjoined from preaching during the term of three years next ensuing, and his sermons were directed to be publicly burnt by the common hangman.

IMPEACHMENT OF JAMES, EARL OF DERWENTWATER; WILLIAM, LORD WIDDRINGTON; WILLIAM, EARL OF NITHISDALE; ROBERT, EARL OF CARNWATH, WILLIAM, VISCOUNT KENMURE, AND WIL-

LIAM, LORD NAIRN, 15 Howell's State Trials 762; 7 Cobb. Parl. Hist. 238; 6 Emlyn's State Trials 1; Salmon's Abridgment of State Trials 861 (1716).

Charge: High Treason.

They were tried, convicted and executed.

IMPEACHMENT OF GEORGE, EARL OF WINTOUN, 15 Howell's State Trials 806; 6 Emlyn's State Trials 17; Salmon's Abridgment of State Trials 862 (1716).

Charge: High Treason.

He was tried, convicted and executed.

IMPEACHMENT OF HENRY, VISCOUNT BOLINGBROKE, 15 Howell's State Trials 994; 7 Cobb. Parl. Hist. 129 (1715).

Charge: "High Treason and other High Crimes and Misdemeanors."

1st. That in violation of existing treaties, he "entered into a most treacherous confederacy with the ministers and emissaries of France, to frustrate the just hopes and expectations of her majesty and her people, by disuniting the confederacy (between England, Germany and the United Provinces) at the most critical juncture, when they were ready to reap the fruits of so many triumphs over the common enemy," by entering into a clandestine treaty with France, without notice to the other members of the confederacy, "in which the particular interests of Great Britain, and the common interest of Europe, were shamefully betrayed."

2nd. That notwithstanding the matters above stated, he "did advise and procure the making a private and separate treaty or convention on the subject of peace, between the said crowns without any communication thereof to her majesty's allies; and . . . did afterwards . . . falsely and treacherously advise her late majesty to sign powers to several persons, for concluding on her behalf, a pernicious and destructive treaty or convention, on the said subject of peace with France."

3rd. That notwithstanding the matters above stated, he "did falsely, maliciously and traitorously disclose and communicate her majesty's said instructions to her said ambassador; and was privy to, and did advise, consent, or approve, that the same should be, and accordingly the same were, communicated and disclosed to the said Sieur Mesnager, a subject of the said French king, and an enemy to her late majesty, . . . contrary to the duty of his allegiance, and the laws and statutes of this realm."

4th. That notwithstanding the matters above stated, he "did falsely, wickedly and traitorously, aid, comfort, assist, and

adhere to, the said French king, against her said majesty; and . . . did falsely, maliciously, and traitorously, communicate and disclose her said majesty's then final instructions to her said plenipotentiaries, relating to the said negotiations of peace; or was privy to, and did advise and consent and approve that the same should be, and accordingly the same were, communicated and disclosed to Abbot Gaultier, an agent and emissary of the said French king, and an enemy of her said majesty, . . . contrary to the duty of his allegiance, and the laws and statutes of this realm."

5th. That notwithstanding the matters above stated he "did falsely, maliciously, wickedly and traitorously, aid, help, assist, and adhere to, the said French king, then an enemy to her late majesty, against her said majesty; and in execution and performance of the said aiding, assisting and adhering, maliciously, falsely and traitorously, did counsel and advise the said enemy, in what manner, and by what methods, the said important city of Tournay, then in possession of the States General; might be gained from them to the French king, . . . contrary to the duty of his allegiance, and the laws and statutes of this realm."

6th. That notwithstanding the matters above stated, he "did falsely, maliciously, wickedly and traitorously, aid, help, assist, and adhere to the Duke of Anjou, then an enemy to her said late majesty, against her said majesty, . . . against the duty of his allegiance, and the laws and statutes of this realm."

This impeachment was not tried. The Viscount was attainted and afterwards pardoned, but "never recovered his peerage."

IMPEACHMENT OF JAMES, DUKE OF ORMOND, 15 Howell's State Trials 1007; 7 Cobb. Parl. Hist. 138 (1715).

Charge: "High Treason and other High Crimes and Misdemeanors."

1st. "Whereas James, Duke of Ormond . . . being appointed general of the forces in the Netherlands of her late majesty Queen Anne, with orders to prosecute the war against France with all possible vigour, in conjunction with her said majesty's allies . . . having withdrawn his true and due obedience from her late majesty, and affection from his country, did, during the said war, falsely, maliciously, wickedly and traitorously aid, help, assist and adhere to the said French king against her said late majesty, and . . . did send private intelligence and information to Marshal Villars, then an enemy to her said late majesty and general of the French king's army . . . of a march the army of her late majesty and her allies

was then going to make, and of the design of the said army in making that march."

2nd. That knowing of certain traitorous designs against her majesty "he, the said James, duke of Ormond, in order to disguise and conceal from her said late majesty and the whole kingdom the said traitorous designs . . . in aid and comfort of the French king, then in open war with, and an enemy of her said majesty, did . . . wickedly, falsely and treacherously, abuse and impose upon her said late majesty and her council, by affirming and declaring therein, 'That, if he found an opportunity to bring the enemy to a battle, he should not decline it,' although by a private letter he . . . did on the contrary wickedly promise and engage, 'That he would not attack or molest the French army, or engage in any siege against France.' "

3rd. That he . . . "being at that time general of her majesty's forces against France, and a subject of her majesty, not considering the duty of his allegiance, but . . . devoting himself to the service of France, and designing to give aid and comfort to the French king and his subjects, then in open war with and enemies to her late majesty, in violation of the many treaties of alliance between Great Britain and several other princes and states for carrying on the war against France , . . in execution of his said aiding, helping, assisting, and adhering, and in pursuance of a wicked promise he had secretly made the same day to Marshal Villars, general of the French army, to that purpose, maliciously, falsely and traitorously . . . did advise and endeavor to persuade the generals of the confederate army against France, and the deputies of the States General to raise the siege of Quesnoy, a French town then besieged by them; and did then further, traitorously and wickedly, refuse to act any longer against France and then also traitorously and wickedly told the said generals . . . 'That he could no longer cover the siege of Quesnoy; but was obliged by his instructions to march off with the queen's troops, and those in her majesty's pay.' "

4th. "That he the said James, Duke of Ormond, did not only wickedly and falsely so affirm . . . but also, to induce the said generals of the confederate army and the States deputies to comply with his proposal to them to abandon the said siege; . . . did wickedly represent their compliance therein as the most effectual way to induce her said late majesty to take care of the said confederates' interests at the peace; whereby he . . . did, in effect, threaten her said late majesty's good friends and allies, 'That unless they would dishonorably abandon

an enterprise undertaken by common consent, and thereby save a strong fortress and a numerous garrison of the enemy, they were not to expect that her late majesty would take care of their interests at the general peace.' "

5th. That on being requested by the said French general "To be informed what troops remained with the confederate army . . . in order to fall upon and attack the said confederate army," he ". . . did traitorously, and wickedly, contrary to the duty of a true and faithful subject, and contrary to his allegiance, and the laws and statutes of this realm, . . . traitorously send secret intelligence to the said Marshal Villars, the general of the French army, of the number of troops that had left the said confederate army, and also of the march the said confederate army had that morning made."

6th. "And whereas he . . . had formed a design to surprise and take the towns of Nieuport and Furnes, or one of them, then in the possession of the French king, . . . intending to strengthen the hands of the common enemy by defeating the said enterprise, did . . . wickedly and basely suggest to and advise her said late majesty to send secret intelligence of, and to betray, the said counsels and designs of her good and faithful allies, the States General, to the French King . . . and did further wickedly and shamefully suggest the means of putting the said treachery in execution, by giving private intelligence of the design to the said Marshal Villars."

The duke could not be found, and thereupon he was attainted. The rest of his life "was passed abroad in adherence to the Pretender."

IMPEACHMENT OF THOMAS, EARL OF STRAFFORD, 15 Howell's State Trials 1013; 7 Cobb. Parl. Hist. 144 (1715).

Charge: High Crimes and Misdemeanors.

1st. That when England and other countries were at war with France, and a "separate, dishonorable, and destructive negotiation of peace was entered into, between the ministers of Great Britain and France, without any communication thereof to her majesty's allies, according to the several treaties; he the said Earl did not only take upon himself, and presume from time to time, to advise and exhort that the same should be continued and carried; but did likewise frequently concert private and separate measures with the ministers of France, in order to impose upon and deceive her majesty's good subjects and her allies, and was instrumental in promoting the said separate negotia-

tion, exclusive of all the allies, and to their manifest prejudice and detriment."

2nd. Though he knew that "the maintaining a perfect union and good correspondence between her late majesty and the illustrious House of Hanover was of the utmost importance, for preserving to these kingdoms the invaluable blessings of their religious and civil liberties, by securing the succession to the crown, to a race of Protestant princes, ever renowned for their good justice and clemency, and thereby defeating the traitorous designs of the Pretender; . . . (he did by) divers false representations and scurrilous reflections upon his present most gracious majesty, then elector of Hanover, endeavor to alienate her majesty's affections from his said electoral highness, and to create or widen fatal differences or misunderstandings between them, . . . (whereby he did) not only prostitute and dishonor the high characters he was then invested with, but, as far as in him lay, did dissolve the mutual confidence and good understanding so necessary to be maintained between her said late majesty and the illustrious House of Hanover, for the safety and prosperity of Great Britain and the common liberty of Europe."

3rd. That notwithstanding the matters above stated he did, "with other evil counsellors, privately, wickedly, and treacherously concert and agree with the ministers of France, that (their) . . . proposals, so derogatory to the dignity of her majesty, and dangerous to these kingdoms, should be the conditions upon which France would agree to treat of a peace with Great Britain . . . to the great dishonor of her majesty and these kingdoms, and to the apparent danger of the Protestant succession."

4th. That "in defiance of the many treaties between her majesty and her allies, . . . and in contempt of the advice and opinion of parliament, . . . and also in direct violation of her majesty's instructions, he . . . did not only presume to treat about the peace with the ministers of France, without insisting, as he ought to have done, that Spain and the West Indies should not be allotted to the said House of Bourbon; but also, when the ministers of his imperial majesty and of the king of Portugal, in conformity to the mutual obligations and treaties between her majesty and them and with each other, demanded of France, 'That Spain and the West Indies should be restored to the House of Austria' and requested him, the said Earl, 'to join with them, to strengthen that demand,' did decline and refuse to do the same; by which perfidious and unwarrantable practices . . . incurable jealousies and discords were created between her majesty and her allies."

5th. That when he was "informed of the reasonable prospect which, by the blessing of God, the army of the confederates then had, of gaining new conquests over the army of France; in order to disappoint the expectations of the allies, and to give success to the secret and wicked negotiations then carrying on by himself and other evil counsellors with the ministers of France; . . . did wickedly and treacherously suggest and advise, that a cessation of arms should be made with France, by her majesty, without and even against the consent of her good allies and confederates, . . . did advise her late majesty . . . to cause a cessation to be made and proclaimed between her majesty's and the French army . . . which were accordingly done, . . . by which wicked and perfidious counsels . . . the progress of the victorious arms of the confederates was stopped . . . and the French king made absolute master of the negotiations of peace."

6th. That he "wickedly advised and procured the said fatal cessation of arms, and likewise obtained for France the separation of the troops of Great Britain from the confederate army; in further execution of his treacherous purposes, to advance and promote the interests of France," and did also take such steps that "Ghent and Briges were seized by the troops of Great Britain; whereby all means of communication between Holland and the confederate army (was) entirely cut off."

An answer and then a replication was filed, but the journal does not mention any further proceedings in the matter.

IMPEACHMENT OF ROBERT, EARL OF OXFORD, AND EARL MORTIMER, 15 Howell's State Trials 1046; 7 Cobb. Parl. Hist. 74, 116; 6 Emlyn's State Trials 102; Salmon's Abridgment of State Trials 866 (1717).

Charge: "High Treason and other High Crimes and Misdemeanors."

1st. "He the said Robert . . . having no regard to the honor or safety of her late majesty or her kingdoms, or to the many solemn engagements she was then under to the old and faithful allies of this nation, or to the common liberties of Europe; but being devoted to the interest and service of the French king, the common enemy; and being then lord high treasurer of Great Britain, and one of her majesty's most honourable privy council . . . (did) maliciously and wickedly form a most treacherous and pernicious contrivance and confederacy with other evil-disposed persons, then also of her majesty's privy council, to set on foot a private, separate, dishonorable, and de-

structive negotiation of peace between Great Britain and France, without any communication thereof to her majesty's allies, according to their several treaties."

2nd. That "he did advise and promote the making a private and separate treaty between the said crowns; . . . in which treaty the immediate interests even of Great Britain are given up to France and the Duke of Anjou is admitted to be king of Spain, . . . whereby he . . . did not only assume to himself royal power, in taking upon him to meet and treat with the enemy without any authority . . . but did what in him lay to subvert the ancient and established constitution of the government of these kingdoms by introducing illegal and dangerous methods of transacting the most important offices of state."

3rd. That he "did, together with other evil disposed persons, then in high trust under her majesty, contrive and advise the preparing and forming a set of general preliminaries, . . . and did, contrary to his duty and trust, impiously advise her sacred majesty that the same should be, and accordingly they were received by her majesty, and communicated to the ministers of the allies then residing in England, as a ground of a general negotiation of peace; and as if the same were the only transactions that had been on this subject between Great Britain and France."

4th. That he "did falsely and maliciously declare, or was privy to advising and consenting, that it should be, and so it was declared, in her majesty's name, that she had made no separate treaty with France, nor would she ever make any before she had fully complied with all engagements with her allies."

5th. That when authorized by her majesty to treat for peace, he had "privately and treacherously negotiated and agreed with the ministers of France, that Spain and the West Indies should remain in a branch of the House of Bourbon; and had prevailed on her sacred majesty to be party to the said private treaty, wherein the same is necessarily implied."

6th. That while proposals were pending "for the negotiating a general peace" between France and all the allies, "in defiance of the express instructions given to her said plenipotentiaries," he "did with others, his accomplices, advise, concur, continue, and promote a private, separate and unjustifiable negotiation of peace with France, directly from England to France, without any communication thereof to the allies . . . whereby the good effects of the said general negotiations were entirely defeated."

7th. That "by the influence of his evil counsels her majesty was prevailed on to accept and finally to conclude and ratify a

treaty of peace with France, wherein the said renunciation (of the crown of Spain) is taken as a sufficient expedient to prevent the mischiefs that threatened all Europe, in case the crowns of France and Spain should be united upon the head of one and the same person; although he . . . well knew, that a memorial had been transmitted . . . whereby it was declared, that the said renunciation would be null and invalid by the fundamental laws of France. . . . By which false and treacherous counsels, he the said Robert Earl of Oxford and Earl Mortimer did not only betray the interests of the common cause into the hand of its most formidable enemy, but wilfully and maliciously abused the power and influence which he had obtained with her majesty."

8th. "That her late majesty, Queen Anne, having . . . earnestly recommended from the throne, that provision might be made for an early campaign, in order to carry on the war with vigor, and as the best way to render the treaty of peace effectual; . . . he, the said Robert, Earl of Oxford, and Earl Mortimer being truly informed of the sure project, which, by the blessing of God, the army of the confederates then had, of gaining new conquests over the army of France, and whereby they would have been enabled to have forced terms of peace, safe, honorable and lasting: . . . he did advise and consent, that an order should be sent, in her majesty's name, to the Duke of Ormond in Flanders, to avoid engaging in any siege, or hazarding a battle till further orders, . . . and did consent and advise that orders should be sent to the Bishop of Bristol (Robinson), one of her majesty's plenipotentiaries then at Utrecht, to take the first solemn opportunity to declare to the Dutch ministers, that her majesty looked on herself from their conduct to be then under no obligation whatsoever to them. . . . By which several wicked and perfidious counsels, the French king (was) made absolute master of the negotiations of peace, and the affairs of Europe given into his hands."

9th. "That to impose upon the allies the fatal necessity of submitting to the terms of France, and in order thereto to leave the whole confederate army at the mercy of the common enemy, he, the said Robert, Earl of Oxford and Earl Mortimer, was privy and consenting to a secret and separate concert with the ministers of France, without the knowledge of the allies, for the separating the troops in her majesty's pay from the rest of the confederate army."

10th. "That in further execution of his pernicious designs . . . he . . . did carry on and concert with the min-

isters of France a private and separate negotiation for a general suspension by sea and land, between Great Britain and France; and to that end among others, did advise her majesty to send over Henry Viscount Bolingbroke, one of her principal secretaries of state, to the Court of France with powers to settle the said suspension. In pursuance of which a destructive Treaty of Suspension was made in France . . . for four months . . . without the knowledge or any participation of the allies."

11th. That he did "falsely, maliciously, wickedly, and traitorously, aid, help and assist, and adhere to the French king, then an enemy to her late majesty; and in execution and performance of his aiding, assisting, and adhering, maliciously, falsely and traitorously did counsel and advise the said enemy, in what manner and by what methods, the said important town and fortress of Tournay, then in the possession of the States-General, might be gained from them to the French king, contrary to the duty of his allegiance, and the laws and statutes of this realm."

12th. That he did "falsely, maliciously, wickedly and traitorously, aid, help, assist, and adhere to the said Duke of Anjou, then an enemy to her said late majesty; and in the execution and performance of his said aiding, helping, assisting and adhering, and in confederacy and combination with the then enemies of her late majesty, and with divers other wicked and evil disposed persons, did, at several times, in the years aforesaid, advise and counsel with the enemies of her late majesty, and in such counselling and advising, did concert with them, and did promote the yielding and giving up Spain and the West Indies, or some part thereof, to the said Duke of Anjou, then in enmity with her majesty."

13th. That "having by his wicked artifices, engaged her majesty in the said private treaty with France, without any security for the commerce of Great Britain, he did artfully and cunningly contrive with the ministers of France to keep in suspense all matters that concerned the commerce of Great Britain, until, by means of his wicked and pernicious counsels aforementioned, France was become master of the negotiations, and the chief advantages for the commerce of Great Britain by that means remaining unsettled: and the ministers of France afterwards disputing the most essential articles which had been in agitation, and particularly that fundamental principle of treating and being treated as *Gens Amicissima* . . . he, the said Robert . . . in defiance of the express provision of an act of parlia-

ment . . . did advise her majesty finally to agree with France, that the subjects of France should have liberty of fishing and drying fish on Newfoundland: and did also advise her majesty to make a cession to France of the Isle of Cape Breton, with liberty to fortify the same . . . (which) terminated at last in the sacrifice of the commerce of Great Britain to France without the least advantage in trade procured for these kingdoms."

14th. That he "did, in concert with other evil and false counsellors, even without any application from his royal highness, the Duke of Savoy, and after the French king had, in the course of the said private and separate negotiations, consented that the kingdom of Sicily should remain to the House of Austria, form a project and design to dispose of the kingdom of Sicily to the Duke of Savoy from the House of Austria. . . . And afterwards by his privity and advice, her majesty was prevailed on to assist his royal highness against the emperor then in alliance with her majesty, with a part of her royal fleet at her own expense, in order to put him in possession of the said kingdom of Sicily."

15th. That he misrepresented "the most essential parts of the negotiations of peace, to obtain the sanction of parliament to his traitorous proceedings, and thereby fatally to deceive her majesty, her allies, her parliament, and her people."

16th. That "contrary to his duty and his oath, and in violation of the great trust reposed in him, and with an immediate purpose to render ineffectual the many earnest representations of her majesty's allies against the said negotiations of peace, as well as to prevent the good effects of the said advice of the House of Lords, . . . he did advise her majesty to make and create twelve peers of this realm, and lords of parliament, and pursuant to his destructive counsels letters patent did forthwith pass, and writs issued, whereby twelve peers were made and created; and did likewise advise her majesty immediately to call and summon them to parliament; which being done accordingly, they took their seats in the House of Lords. . . . Whereby the said Robert, Earl of Oxford and Earl Mortimer, did most highly abuse the influence he then had with her majesty, and prevailed on her to exercise in the most unprecedented and dangerous manner that valuable and undoubted prerogative, which the wisdom of the laws and constitution of this kingdom hath entrusted with the crown for the rewarding signal virtue and distinguished merit."

Later on additional articles were presented against the defendant, as follows:

1st. That after "a dangerous and destructive expedition had been projected and set on foot, under pretence of making a conquest of the possessions of the French king in North America, but with a real design to promote his interests, by weakening the confederate army in Flanders, and dissipating the naval force of this kingdom, as well for the sake of the private gain of the promoters of the said expedition, he . . . (did) advise her majesty to consent to the making an expedition for the conquering Canada . . . did further advise her majesty to give orders for detaching several battalions of the forces, then in the service of her majesty in conjunction with her allies in Flanders, and to send the same with a large squadron of men of war on the said enterprise; . . . and he did most ungratefully and corruptly employ his wicked arts, and the credit which he had gained by his many false and crafty insinuations and practices, to keep the House of Commons from examining that affair."

2nd. That "making a most dishonorable and ungrateful use of the ready access he had to her late majesty (he) did advise her majesty to sign a warrant to himself, being then lord high treasurer of Great Britain, for the issuing and payment of the sum of £13,000 to John Drummond, Esq., or his assigns, for such special services relating to the war, as her majesty had directed . . . and did sign a warrant for the payment of the said £13,000 for such special services of the war, as her majesty had directed; although no special services had been, or were at any time afterwards directed by her majesty, to which the said moneys were to be applied: (and) did afterwards fill up assignments of the said orders for £12,000, part of the said £13,000 to himself, and the remaining part to such other persons as he thought fit . . . and did afterwards . . . dispose of the said orders and tallies to his own private use and advantage . . . by which most vile and scandalous corruption he . . . was guilty of . . . embezzlement of her treasure; and of great injustice and oppression of other of her majesty's subjects."

3rd. That he prevailed on her majesty to send "Matthew Prior as her majesty's plenipotentiary to the French king, with instructions to treat and conclude matters, of the highest importance, relating to the general negotiations of peace; but the same was a treacherous and wicked contrivance of him the said Robert, Earl of Oxford and Earl Mortimer, for the more effectually carrying on and promoting his private, separate and dangerous practices with the ministers of France, and the enemies of her majesty and her kingdoms; . . . and did most cor-

ruptly and scandalously combine with the said Matthew Prior for the defrauding her majesty of very great sums, under the color of his said employments in France."

4th. That he "by the means of the said Matthew Prior, held a private and unlawful correspondence with the said consort of the late King James the 2nd, then residing in France, and being determined secretly to promote, as far as in him lay, the interest of the Pretender, but yet contriving to avoid the penalty of High Treason; . . . and being then lord high treasurer of Great Britain, did give private instructions to the said Arthur, to pay the sum of £1000 to the Abbot Gaultier, or to his use, pursuant to which direction the said Arthur did pay or cause to be paid the said sum of £1000 to the said Abbot Gaultier, or for his use; whereby the said Robert, Earl of Oxford and Earl Mortimer, did most wickedly betray the honour of her late majesty and the imperial crown of these realms."

5th. That he "did, together with other false and evil counsellors, advise her majesty to receive and admit him (one Patrick Lawless) as a minister from his said Catholic majesty; and the said Earl did presume frequently to meet, confer and negotiate the most important matters of the nation with the said Lilesh, alias Lawless, in the quality aforesaid. And the better to conceal his said illegal and dangerous measures from her said majesty, he, the said Robert, Earl of Oxford and Earl Mortimer, was privy to, consenting, and advising that the said Lilesh, alias Lawless, should be introduced to her said majesty and should be received and treated by her minister, under the false and disguised name of Don Carlo Moro."

6th. That he "was not only highly wanting in his duty to her majesty, as a faithful minister, to have prevented the conclusion of the treaty of peace with Spain, till just and honourable conditions were secured for the Catalans, but did falsely, maliciously, and treacherously, advise her majesty to conclude a peace with the king of Spain, without any security for the ancient and just rights, liberties and privileges of that brave, but unhappy nation. . . . (Whereby) great numbers of the nobility of Catalonia, who for their services in conjunction with her majesty and her allies, had, in all honour, justice and conscience, the highest claim to her majesty's protection, are now dispersed in dungeons, throughout the Spanish dominions; and not only the Catalan liberties extirpated, but by those wicked counsels of him, the said Robert, Earl of Oxford and Earl Mortimer, Catalonia itself is almost become desolate."

The earl was tried and acquitted.

IMPEACHMENT OF THOMAS, EARL OF MACCLESFIELD, 16 Howell's State Trials 767; 8 Cobb. Parl. Hist. 436; 6 Emlyn's State Trials 477; Salmon's Abridgment of State Trials 884 (1725).

Charge: High Crimes and Misdemeanors.

1st. That "whilst he continued Lord Chancellor of Great Britain, and before the admission of Richard Godfrey into the office of one of the Masters of the Court of Chancery, he did, by colour of his office of Lord Chancellor, illegally, corruptly and extorsively insist upon, take and receive of and from the said Richard Godfrey, the sum of £840 or some other sum of money, for the admitting him into such office of a Master of the Court of Chancery."

2nd. That he "did, by colour of his office of Lord Chancellor, illegally, corruptly and extorsively insist upon, take and receive of and from James Lightboun the sum of £6000 or some other great sum of money, in consideration of, and for the admitting him into such office of one of the Masters of the Court of Chancery."

3rd. That "he did, by colour of his office, of Lord Chancellor, illegally, corruptly and extorsively insist upon, take and receive, of and from John Borret the sum of £1575 or some other sum of money, for the admitting him into such office of a Master of the said Court of Chancery."

4th. That he "did, by colour of his office of Lord Chancellor, illegally, corruptly and extorsively insist upon, take and receive of and from Edward Conway the sum of £1500, or some other sum of money, for admitting of him into such office of a Master of the said Court of Chancery."

5th. That he "did, by colour of his office of Lord Chancellor, illegally, corruptly and extorsively insist upon, take and receive, of and from William Kynaston, the sum of £1575, or some other sum of money, for the admitting him into such office of a Master of the said Court of Chancery."

6th. That he "did, by colour of his office of Lord Chancellor, illegally, corruptly and extorsively insist upon, take and receive, of and from Thomas Bennet the sum of £1575, or some other sum of money, for the admitting him into such office of a Master of the Court of Chancery."

8th. That he "did, by colour of his office of Lord Chancellor, illegally, corruptly and extorsively insist upon, take and receive, of and from Mark Thurston, the sum of £5250, or some other sum of money, in consideration of and for the admitting him into such office of a Master of the said Court of Chancery."

9th. That he "did illegally, corruptly and extorsively insist upon, take and receive, of and from the said Thomas Bennett, the sum of £105, or some other sum of money for and in consideration of the permitting and accepting the surrender of his said office, in order to and for the obtaining and procuring a new grant of said office to the said Hugh Hamersley."

10th. "That the said Thomas, Earl of Macclesfield, whilst he continued Lord Chancellor of Great Britain, did illegally and corruptly ordain, name and make divers other officers and ministers of his majesty, for gift and brocage, and did likewise illegally and corruptly sell divers other offices, touching and concerning the administration and execution of justice in the Court of Chancery to several persons, for divers great sums of money."

11th. That "in order to advance and increase the illegal and corrupt gain arising to himself from the sale and disposal of the offices of Masters of the Court of Chancery, . . . he did falsely represent the said persons, so by him admitted to the offices of Masters of the said Court of Chancery, as persons of great fortunes, and in every respect qualified for the trust reposed in them, to the manifest deceit and injury of the suitors of the said Court."

12th. Although he knew that "an unjust and fraudulent method was practiced in the Court of Chancery upon the sale of the offices of Masters of the said Court, and upon the admissions of new Masters, that the prices or sums of money agreed to be paid for the purchase of the said offices, and for the admissions thereinto, were satisfied and paid out of the moneys and effects of the suitors of the Court deposited in the hands of the respective Masters, surrendering their offices, or dying, yet . . . he did not at any time, whilst he continued in the office of Lord Chancellor, use or take any measure to reform the said abuse, or to prevent the same."

13th. "That Fleetwood Dormer, Esq., one of the Masters of the Court of Chancery, having embezzled great part of the money and effects belonging to the suitors of the said Court," and the defendant being applied to to secure his person "neglected and declined either to secure the person of the said Fleetwood Dormer, and his estate and effects, or to make a proper inquiry into the said deficiency; . . . and did endeavour, by many indirect practices, to conceal from the suitors of the Court the true state and condition of the said office, as well with respect to the effects of the said Fleetwood Dormer, as to the debt due from him to the suitors of the Court."

14th. "That the said Fleetwood Dormer, having towards satisfaction of the suitors of the said Court, assigned to Henry

Edwards, Esq., a debt of £24,046, 4s. or some other great sum, due from William Wilson, a banker, to the said Fleetwood Dormer, . . . the said Thomas, Earl of Macclesfield, whilst he continued Lord Chancellor of Great Britain, . . . did in an unwarrantable, clandestine, and unusual manner, authorize, direct, and establish a procarious and trifling composition with the said William Wilson, upon the terms of the said William Wilson's paying the sum of £1463, 2s., 1d., and assigning £10,000 . . . in discharge of the said debt."

15th. That in order "to carry on his corrupt and unjust purposes and to conceal the deficiency that was in the office of the said Fleetwood Dormer, he did . . . order the several Masters of the said Court of Chancery to bring in their accounts of the cash, effects, and securities in their hands belonging to the suitors of the Court, not with a design of examining their accounts, or securing the estate and effects of the suitors, but with an intent to terrify the said Masters, and thereby oblige them to contribute great sums of money towards answering the demands that should from time to time be made upon the said office, . . . by which practices the said Earl, being then Lord Chancellor of England, by colour of his authority, did persuade and induce nine of the Masters of the said Court of Chancery to pay £500 each for the purposes aforesaid, several of whom paid the same out of the money or effects of the suitors in their hands."

16th. That the Court of Chancery having directed "Henry Edwards, Esq., one of the Masters of the said Court of Chancery, who succeeded the said Fleetwood Dormer, Esq.," to pay Elizabeth Chitty "the sum of £1000, part of the sum of £10,000, . . . and the said Henry Edwards complaining to the said Earl, that the making orders upon him to pay money which had been received by the said Fleetwood Dormer was a very great hardship upon him, . . . the said Earl of Macclesfield, being then Lord Chancellor, in further prosecution of his unjust and corrupt purposes, did, by colour of his authority, endeavour to prevail with the Masters of the said Court of Chancery, to raise the said sum of £1000 out of their effects, by representing to them, that a discovery of the deficiency in the said office might occasion a parliamentary or public enquiry into the nature and condition of their offices, and hazard the forfeiture of the same."

17th. That "in order to carry on his unjust designs of concealing the said deficiency, and to prevent any public enquiry that might arise from the just complaints of the suitors of the

said Court (he), did, from time to time, in manifest and wilful violation of the trust reposed in him, make orders on the said Henry Edwards for payment of the money belonging to several particular suitors, which had been lodged in the hands of the said Fleetwood Dormer, in obedience to which orders several sums were paid, without regard to, or consideration of, the proportion which the rest of the suitors were entitled to out of the effects of the said Fleetwood Dormer."

18th. "That the said Thomas, Earl of Macclesfield, notwithstanding that he very well knew, and was informed that the Masters of the said Court did, or that it was in their power, from time to time, and at their pleasure to dispose of and employ the money and effects belonging to the suitors of the said Court; . . . and notwithstanding . . . it was also further proposed that the said Masters should give some reasonable security to answer the balance of such cash as should from time to time, be in their hands; and notwithstanding the said Earl was credibly informed, that the sufficiency of some other of the said Masters was very much suspected, yet . . . in order to induce persons to give him, the said Earl, a greater price or reward for their being admitted to the same, did not require or demand any security whatsoever to be given by any of the said Masters, upon their being admitted to their offices, or at any other time."

19th. That when his majesty directed "an enquiry to be made into the accounts of the Masters of the said Court of Chancery (he) . . . did represent to the said Masters, that it would be for their honour and service, to appear able and sufficient, and that, if they made a bold stand now, it might prevent a parliamentary enquiry, or to that effect; and did persuade several of them to make false representations of their circumstances to his majesty, by adding a subscription to their respective accounts delivered to the said Earl, to be laid before his majesty."

20th. That he did "borrow and receive of some of the Masters of the said Court, several great sums of money belonging to the suitors of the said Court, deposited in the hands of such Masters, and did make use thereof for his own private service and advantage."

21st. That he excluded certain persons, duly approved for the trust, they being receivers of the rents and profits of a certain infant's estate, "and did, by such orders, unduly and injuriously nominate and appoint Robert Doyley, Esq., a creature and confidant of his own, and a person altogether unfit and unqualified for so great a trust, to be receiver of the rents and profits of the said estate, and to have a salary for the same,

with a power to let such part of the said estate, as was or should become untenanted; . . . and the said Robert Doyley, after he was so admitted into the said receivership, did for several years receive the rents and profits of the said infant's estate, to the amount of about £10,000, and did embezzle and convert to his own use great part thereof."

He was tried and convicted and sentenced to pay a fine of £30,000, and to imprisonment in the Tower until the fine should be paid.

IMPEACHMENT OF SIMON FRASER, LORD LOVAT, 18 Howell's State Trials 529: 13 Cobb. Parl. Hist. 1438 (1746).

Charge: High Treason.

He was tried, convicted and executed.

IMPEACHMENT OF WARREN HASTINGS, Works of Edmund Burke, Vol. 3, page 106 (Harper & Bros., 1786).

Charge: High Crimes and Misdemeanors.[8]

1st. "That the Court of Directors of the East India Company . . . did positively and repeatedly direct their servants in Bengal not to engage in any offensive war whatsoever. . . . That Warren Hastings, then Governour of Fort William, in Bengal, . . . did express to the court of directors his approbation of the policy thereof; . . . and did signify to the nabob of Oude the said orders, and his obligation to yield punctual obedience thereto. . . . That the said Warren Hastings in direct contradiction to the said orders . . . did in September, 1773, enter into a private engagement with the said nabob of Oude, who was the special object of the prohibition, to furnish him, for a stipulated sum of money to be paid to the East India Company, with a body of troops for the declared purpose of 'thoroughly extirpating the nation of the Rohillas'. . . . That . . . the East India Company or their representatives, were not parties to that engagement. . . . That . . . he did not make or cause to be made, a due inquiry into the validity of the sole pretext used by the said nabob; . . . that instead of such previous inquiry . . . the said Warren Hastings did stimulate the ambition and ferocity of the nabob of Oude to the full completion of the inhuman end of the said unjustifiable enterprise. . . . That the ob-

[8] These articles cover 170 pages of double column brevier type and hence can only be abstracted in the most general way. Probably nine-tenths of the articles are simply evidence relating to the charges.

jects avowed by the said Warren Hastings . . . are stated by himself . . . that it would ease the company of a considerable part of their military expense, and preserve their troops from inaction and relaxation of discipline. . . . That the said nabob of Oude did, in consequence of the said agreement, and with the assistance of British troops . . . unjustly enter into and invade the country of the Rohillas, and did there make war in a barbarous and inhuman manner."

2nd. "That, in a solemn treaty of peace, concluded the 16th of August, 1765, between the East India Company and the late nabob of Oude, Shuja ul Dowla . . . it is agreed 'That the King Shaw Allum shall remain in full possession of Corah, and such part of the province of Illiabad as he now possesses,' and . . . the faith of the company was pledged to the said king for the annual payment of twenty-six lacks of rupees, for his support. . . . That, in the year 1772, the king Shaw Allum, who had hitherto resided in Allahabad, trusting to engagements which he had entered into with the Mahrattas, quitted that place and removed to Delhi (where he was) . . . compelled, while a prisoner in their hands, to grant sunnuds for the surrender of Corah and Illiabad to them . . . (whereupon the company did) authorize the said Warren Hastings to restore them to him, on condition that he should renounce his claim to the annual tribute of twenty-six lacks of rupees . . . that nevertheless in the treaty concluded by the said Warren Hastings with Shuja ul Dowla . . . it is asserted that his majesty (meaning the king Shaw Allum) . . . had thereby forfeited his right to the said districts" and said Hastings sold them to said Shuja ul Dowla.

3rd. "That the territory of Benares is a fruitful, and has been, not long since, an orderly, well-cultivated and improved province of great extent; and its capital city . . . may rather be considered as the seat of the Hindu religion, than as the capital of a province. . . . And these circumstances . . . did, in a peculiar manner, require that the governour general and council of Calcutta should conduct themselves with regard to its rulers and inhabitants, when it became dependent on the company, on the most distinguished principles of good faith, equity, moderation and mildness. That the rajah Bulwant Sing, late prince or zemindar of the province aforesaid (who) was a great lord of the Mogul empire, dependent on the same, through the vizier of the empire, the late Shuja ul Dowla, nabob of Oude, . . . did attach himself to the cause of the English company (which in consideration thereof did de-

clare that) no breach of treaty will ever have our sanction. That the rajah Bulwant Sing died . . . his son, Cheit Sing, succeeding to his rights and pretensions . . . (and having paid at the request of said company) near £200,000 as a gift to the said vizier . . . was solemnly invested with the government in the city of Benares . . . and the government was accordingly settled on the rajah and his posterity . . . and the grant and stipulation aforesaid was further confirmed by the said Shuja ul Dowla, under the company's guarantee, by the most solemn and awful form of oath known in the Mahomedan religion inserted in the body of the deed or grant. . . . That some time after (the company) did obtain the assignment of the sovereignty paramount of the said government by treaty with the nabob of Oude. . . . That the tribute transferred to the company by the treaty with the nabob of Oude being £250,000 a year sterling and upwards, without any deduction whatsoever, was paid monthly, with such punctual exactness, as had no parallel in the company's dealings. (Yet the company by the casting vote of the said Hastings did require) that the rajah of Benares should consent to the establishment of three regular battalions of sepoys, to be raised and maintained at his own expense . . . estimated at being between fifty and sixty thousand pounds sterling. . . . The said rajah submitted . . . on the express condition . . . that the exaction should continue but for one year, and should not be drawn into precedent. . . . That the said Hastings did cause the said sums of money to be rigorously exacted . . . although no such regular battalions . . . were then raised, or any steps taken towards raising them . . . and (did) demand . . . full payment in specie to be made to him within five days. . . . That the said demand was complied with. . . . (That the next year, said Hastings did make) a demand of the same nature, and on the very same pretence . . . of three battalions to be raised (threatening military measures if the same was not paid). . . . That the third year . . . the same demand was, with the same menaces renewed, and . . . on some short delay of payment of the third arbitrary and illegal demand (said Hastings) did presume, of his own authority, to impose a fine or mulct of £10,000 on the said rajah. . . . That these violent and insulting measures failing to provoke the rajah, and he having paid up the whole demand, the said Warren Hastings, being resolved to drive him to extremities, did make the rajah a sudden demand of £260,000 per annum (additional) . . .

to provide a body of cavalry for the service of the Bengal government (and that and later demands not being promptly met, the said Hastings) resolved to convert the faults committed by the rajah into a public benefit, and (that he) would exact the sum of £500,000 as a punishment . . . and if the rajah should absolutely refuse the demand, that he would deprive him of his zemindary, or transfer the sovereignty thereof to the nabob of Oude (that the results of these and other similar things stated in the article were the arrest of the rajah, three revolutions in the country, and great loss, whereby the said Hastings) is guilty of an high crime and misdemeanor in the destruction of the country aforesaid."

4th. "That the reigning nabob of Oude, commonly called Asoph ul Dowla . . . did gradually become, in substance and effect, as well as in general repute and estimation, a dependent on, or vassal of the East India Company. . . . That the prince aforesaid, or nabob of Oude, did . . . supplicate the said Warren Hastings to be relieved from a body of troops, whose licentious behavior he complained of . . . which request, by the said Warren Hastings, was refused in unbecoming, offensive and insulting language. That the said nabob, labouring under the aforesaid and other burdens . . . did extort from his mother and grandmother . . . great sums of money, amounting in the whole to £630,000 sterling. . . . That on the demand of said nabob of Oude on his parents for the last of said sums . . . they did positively refuse to pay any part of the same . . . until he should agree to certain terms to be stipulated in a regular treaty . . . and a treaty was accordingly agreed to, executed by the nabob, and guaranteed by . . . the resident of Oude, under the authority and with the express consent of the said Warren Hastings and the council general. . . . That the said Warren Hastings having by appointment met the nabob of Oude . . . did contrary to justice and equity, and the security of property, as well as to public faith, . . . authorize the said nabob to seize upon and confiscate to his own profit, the landed estates, called jaghires, of his parents, kindred and principal nobility . . . whose lands had been guaranteed to them by the company. . . . That the said Warren Hastings, in order to cover the violent and unjust proceedings aforesaid, did assert a claim of right in the said nabob to all the possessions of his said mother and grandmother, as belonging to him by the said Mahomedan law, and . . . did cause to be taken . . . several passionate, careless, irrelevant and irregular affidavits

. . . that the aged women before mentioned had formed, or engaged in, a plan for the deposition of their son and sovereign, and the utter extirpation of the English nation. . . . That the said Warren Hastings . . . did order him, the said resident, to use the British troops under his direction for that purpose . . . until the begums (princesses) are at the entire mercy of the nabob. That in conformity to the said peremptory orders, a party of British and other troops . . . first stormed the town and afterwards the castle . . . and occupied all the outer inclosure of the palace of one of the princesses, and blocked up the other. . . . That in consequence of these severities upon herself, and on those whom she most regarded and trusted, the mother of the said nabob did at length consent to the delivering up of her treasures, and the same were paid to the resident. . . . That bullion, jewels and goods to the amount of £500,000 and upwards, were actually received by the resident for the use of the company. . . . (Various other recited cruel steps were taken to extort more money, and) the said Warren Hastings was duly apprised of all the material circumstances . . . but did nothing to stop . . . them; but on the contrary . . . (wrote that) I have a right to require and insist on the complete execution of them. . . . (That in continuance of said cruelties the said princesses and their attendants were kept without proper food, begging) most piteously for liberty that they may earn their daily bread by laborious servitude, or to be relieved from their misery by immediate death. . . . That the said Warren Hastings . . . being expressly ordered by the Court of Directors to restore to them their estates . . . did contumaciously and cruelly decline any compliance with the said orders, until his journey to Lucknow, when he did (restore them), as he says . . . but with the defalcation . . . of a large portion of their respective shares . . . (and an inquiry being ordered) he, the said Hastings, in order to effectually stifle the said inquiry, . . . (asserted that it) would be productive of evils greater than any which have already taken place, and which time has almost obliterated."

5th. "That a prince called Ahmed Khan was of a family amongst the most distinguished of Hindostan, and of a nation famous throughout the empire for its valor in acquiring, and its policy and prudence in well governing territories it did acquire. . . . Ahmed Khan toward the close of his life was dispossessed of a large part of his dominions by the prevalence of the Mahratta power. . . . That the hardship of his case

being frequently reported to Warren Hastings, Esq., he did suggest a doubt whether he ought to be still subject to tribute. Then . . . as a means of said relief did, with the consent of the Board, order the native sequestrator to be removed and an English resident and servant of the company to be appointed in his room, declaring 'he understood a local interference to be indispensably necessary.' . . . The said Warren Hastings did nevertheless, in a certain paper purporting to be a treaty made . . . with the nabob of Oude . . . consent to an article therein that no English resident be appointed to Farruckabad and that the person be recalled. . . . That on the said Warren Hastings' representation of the transaction aforesaid to the Court of Directors, they did heavily and justly censure the said Warren Hastings for the same, recommending relief to the suffering prince, but . . . immediately on the removal of the British resident, the country of Farruckabad was subjected to the discretion of a certain native manager of revenue . . . who did impoverish and oppress the country, and insult the prince and deprive him of all subsistence from his own estates, taking from him even his gardens and the tombs of his ancestors and the funds for maintaining the same. That on complaint of those proceedings, the said Hastings did, of his own authority and without communicating with his council, direct the native collector aforesaid to be removed and the territory of Farruckabad to be left to the sole management of its natural prince. But in a short time the said Hastings, pretending to receive many complaints did . . . withdraw his protection and interference altogether, whereby . . . Farruckabad which was once a city of great opulence and trade is now daily deserted by its inhabitants, its walls mouldering away, without police protection, exposed to the depredations of a banditti of two or three hundred robbers who night after night enter it for plunder, murdering all who oppose them. . . . And the said Hastings has directly made or authorized no less than six revolutions in less than five years in the aforesaid harassed province (whereby), . . . the said Hastings is guilty of high crimes and misdemeanors."

6th. "That the late nabob of Oude . . . and the mother of the nabob, in order to quiet the country, and to satisfy in some measure the principal and other inhabitants, did allow and pay a certain pension to the said rajah . . . which pension on the general confiscation of jaghires (made at the instigation of the said Warren Hastings) . . . was discontinued and refused to be paid. That . . . the officer em-

ployed to reduce those disordered parts of the province to submission, after several advantages gained over the rajah and his adherents, did report the utter impossibility of bringing it to a permanent settlement merely by forcible methods, and . . . that the allowing the said rajah a pension . . . would be the most certain method of obtaining a permanent peace . . . (yet) the said Warren Hastings did wilfully and criminally omit to order any relief to the said rajah in conformity to the general sense and wishes of the inhabitants (because of which) the said rajah, honoured and respected by the natives, was hunted down and at length killed in a thicket."

7th. "That the Court of Directors of the East India Company had laid down the following fundamental rules for the conduct of such of the company's business in Bengal as could be performed by contract . . . namely, that all contracts should be publicly advertised and the most reasonable proposal accepted. . . . That the said Warren Hastings in direct disobedience of the said positive orders, and as the directors themselves say, by deliberate breach of his duty, did . . . accept the proposals . . . for providing draught and carriage bullocks and for victualling the Europeans, without advertising for proposals as he was expressly commanded to do. . . . That the Court of Directors of the East India Company, having carefully considered the circumstances and tendency of this transaction, condemned it in the strongest terms (notwithstanding which) the said Warren Hastings in defiance of orders which the directors say were plain and unequivocal, did . . . (again) receive from George Templer a proposal essentially different from the advertisement published by the Governour-General and council . . . and did accept thereof not only without having recourse to the proper means for ascertaining whether the said proposal was the lowest that could be offered, but with another actually before the Board nearly thirty per cent lower than that made by the said George Templer, to whom the said Warren Hastings granted a contract (and did grant various other contracts under like circumstances). . . . That with the same view, and on the same principles, it appears, that excessive salaries and emoluments, at the East India Company's charge and expense, have been lavished by the said Warren Hastings to sundry individuals, contrary to the general principles of his duty and in direct contradiction to the positive orders of the Court of Directors. . . . That these instances are proofs of a criminal profusion to the India Company in the said Warren Hastings, under whose government, and by means

of whose special power, derived from the effect of his casting voice, all the said waste and profusion did take place."

8th. "That, before the appointment of the Governor-General and council of Fort William by Act of Parliament, the allowance made by the East India Company to the presidents in general, and the said Warren Hastings particularly, was restrained by a specific covenant and indenture, which he entered into with the company from accepting any gifts, rewards or gratuities whatsoever. . . . That notwithstanding the covenants and engagements above mentioned (various payments were made by various persons to the said Warren Hastings whereby he) has been guilty of gross evasions, and palpable prevarications and deceit, as well as contumacy and disobedience to the lawful orders of the Court of Directors, and thereby confirmed all the former evidence of his having constantly used the influence of his situation for the most scandalous, illegal and corrupt purposes."

9th. "That Warren Hastings having . . . signified to the Court of Directors his desire to resign his office of governor-general of Bengal, and requested their nomination of a successor to the vacancy . . . and the Court of Directors . . . did unanimously resolve to accept the same; and did also, under powers vested in the said court, . . . nominate and appoint Edward Wheeler, Esq., to succeed to the office . . . which nomination and appointment was afterwards in due form approved and confirmed by his majesty . . . the said Warren Hastings did positively refuse to comply with the said requisition (to deliver up the keys of Fort William and of the company's treasuries) . . . denying that his office was vacant, and declaring his resolution to assert and maintain his authority by every legal means . . . the said refusal was prejudicial to the officers and the servants of the company in India by shaking the confidence to be placed in their agents by those persons with whom it might be for their interest to negotiate on any matter of importance and by thus subjecting the communications of persons abroad with those at home to difficulties not known before."

10th. "That the said Warren Hastings . . . did grant to the surgeon-general a contract for three years for defraying every kind of hospital and medicine expense, not only in breach of the general order of the Court of Directors with respect to the duration of contracts, but in direct opposition to a particular order of the Court of Directors of the 30th of March, 1714."

11th. "That the governor-general and council at Fort William did on the motion and recommendation of Warren Hastings, Esq., enter into a contract . . . for the repairs of the pools

and banks in the province of Burdwan for two years, and . . . the said Warren Hastings did further persuade the supreme council to prolong the term of the above contract . . . for the space of three years more, on the same conditions. . . . That the said contracts, both in the manner of their acceptance by the supreme council, without having previously advertised for proposals, and in the extent of their duration, were made in direct violation of the special orders of the Court of Directors. . . . That the grant of the foregoing contracts and the permission afterwards annexed to the second of said grants, became much more reprehensible from the consideration of the circumstances of the person to whom such a grant was made."

12th. "That it appears that the opium produced in Bengal and Bahar is a considerable and lucrative article in the export trade of those provinces. . . . That in May, 1777, the said Warren Hastings granted to John Mackenzie a contract for the provision of opium, to continue three years and without advertising for proposals. That this transaction was condemned by the Court of Directors. . . . That about the end of the year 1780 the said Warren Hastings, in contradiction to the order above mentioned, did take away the sale of opium from the board of trade, though he disclaimed, at the same time, any intention of implying a censure on their management. . . . That in March, 1781, said Warren Hastings did grant to Stephen Sullivan . . . a contract for the provision of opium, without advertising for proposals, and without even receiving any written proposals from him. . . . That the said Sullivan . . . was a stranger to the country and to all the local commerce thereof, and therefore unqualified for the management of such a concern, and . . . did, shortly after obtaining the same, assign it . . . in consideration (of) . . . a great sum of money. . . . That the said Warren Hastings at the very time when he engaged the company in the contract for engrossing the whole of the opium produced in Bengal and Bahar (was engaged in a scheme for exporting opium to China, though knowing that that was forbidden by the Chinese government). That every part of this transaction, from the monopoly with which it commenced, to the contraband dealing with which it concluded, criminates the said Warren Hastings with wilful disobedience of orders and the continued breach of trust."

13th. "That in the month of February, 1781, Mr. Richard Joseph Sullivan, secretary of the select committee of Fort St. George, applied to them for leave to proceed to Calcutta on his private affairs. That being the confidential secretary . . .

and consequently possessed of all the facts and secrets of the company . . . he went privately into the service of the nabob of Arcot and . . . undertook a commission from the said nabob to the governor-general and council to negotiate with them in favor of certain projects of the said nabob which had been reprobated by the Company. That the said Sullivan was soon after appointed back again by the said Warren Hastings to the office of resident at the durbar of the said nabob of Arcot. That it was a high crime and misdemeanor in the said Hastings to encourage so dangerous an example in the Company's service."

14th. "That . . . the governor-general and council of Fort William, at the special recommendation and request of Warren Hastings, Esq., . . . did conclude a treaty of perpetual friendship and alliance, offensive and defensive, with a Hindoo prince called Ranna of Gohud, for the express purpose of using the forces of the said ranna in opposition to the Mahrattas. That, among other articles, it was stipulated with the said ranna, by the said Warren Hastings, 'that whenever peace should be concluded with the Company and the Mahratta state, the maharajah should be included as a party in the treaty, which should be made for that purpose, and his present possessions, together with the fort of Gualior . . . should be guaranteed to him by such treaty. . . . That in conformity to the above mentioned treaty . . . the said ranna of Gohud was expressly included. That notwithstanding the said express provision and agreement, Madajee Scindia procceded to attack the forts and lay waste the territories of the said ranna . . . in the course of which the ranna and his family were reduced to extreme distress, and in the end he was deprived of his forts, and the whole, not only of his acquired possessions, but of his original dominions so specially guaranteed to him by the British government. . . . That the said Warren Hastings was duly and regularly informed of the progress of the war against the said ranna, and of every event thereof; notwithstanding which he not only neglected in any manner to interfere therein in favor of the said ranna, or to use any endeavors to protest the infraction of his treaty, but gave considerable countenance and encouragement to Madajee Scindia in his violation of it. . . . That the said Warren Hastings was highly culpable in abandoning the said ranna to the fury of his enemies, thereby forfeiting the honor, and injuring the credit of the British nation in India, (and) . . . in violation of the national faith and justice did commit a gross and wilful breach of his duty and was thereby guilty of an high crime and misdemeanor."

15th. "That the property of the lands in Bengal is, according to the laws and customs of that country, an inheritable property, and that it is, with few exceptions, vested in certain natives called zemindars, or landholders, under whom other natives, called talookdars and ryots, hold certain subordinate rights of property, or occupancy, in the said lands. . . . The said Warren Hastings, nevertheless, in direct violation of those acknowledged rights and principles, did universally let the lands of Bengal in farm for five years, thereby destroying all the rights of private property of the zemindars; thereby delivering the management of their estates to farmers, and transferring by a most arbitrary and unjust act of power the whole landed property of Bengal from the owners to strangers." Whereby and by other things stated great wrong was done to the people of the country and the East India Company itself deprived of large revenue.

16th. "That the province of Oude and its dependencies were before their connection with, and subordination to, the Company, in a flourishing condition in regard to culture, commerce, and population, and their rulers and principal nobility maintained themselves in a state of affluence and splendor; but very shortly after the period aforesaid the prosperity both of the country and of its chiefs began sensibly and rapidly to decline . . . although the rents were generally advanced and the country grievously oppressed in order to raise it. . . . That by the treaty of Fyzabad a regular brigade of the company's troops to be stationed in the dominions of the nabob of Oude was kept up at the expense of said nabob. . . . That the said nabob did represent . . . the distressed state of his revenues and . . . his inability to maintain the said troops (and the difficulties relating to the said province having increased from time to time, various means were suggested and carried out by the said Hastings, for the benefit of himself and his appointees, all of which resulted badly, as he should have known they would, so). That in the said deceits, prevarications, contradictions, malicious accusations, fraudulent concealments, and compelled discoveries, as well as in said secret, corrupt, and prodigal disposition of the revenues of Oude, as well as in his breach of faith to the nabob . . . the said Hastings is guilty of a high offence and misdemeanor."

17th. "That it was the declared policy of the Company, on the acquisition of the duannee of Bengal, to continue the country government under the inspection of the resident at the nabob's durbar, in the first instance, and that of the president and the

council in the last. . . . That during the country government, the principal active person in the administration of affairs . . . was Mahomed Reza Khan, who besides large landed property, was possessed of offices, whose emoluments amounted nearly if not altogether to £100,000 a year. That the company's servants in the beginning were not conversant in the affairs of the revenue, and . . . on that ground, as well as in regard to the rank which Mahomed Reza Khan held in the country and the confidence of the people in him . . . they determined to continue him in a share of the authority. . . . That the said Mahomed Reza Khan continued with the same diligence, spirit, and fidelity, to execute the trust reposed in him . . . (nevertheless) the said Warren Hastings lately appointed to the presidency . . . did dispatch, by express messengers, his orders . . . to arrest in his capital, and at his court, and without any previous notice given of any charge, . . . the aforesaid Mahomed Reza Khan, and to bring him to Calcutta. . . . That notwithstanding a total revolution in the power, in part avowedly made for his destruction, the persons appointed for his trial, did, on full inquiry, completely acquit the said Mahomed Reza Khan of the criminal charges against him,, on account of which he had been so long persecuted and confined. . . . That the council-general, established by Act of Parliament in the year 1773, did restore the said Mahomed Reza Khan with the consent and approbation of the nabob, (but under a protest from the said Warren Hastings) to his liberty and his offices . . . and the Court of Directors did approve of the said appointment, and did assure the said Mahomed Reza Khan of their favor and protection, as long as his conduct should merit the same . . . and the said Mahomed Reza Khan did continue to execute the same (offices and duties) without any complaint whatsoever. . . . That in March, 1778, the said Warren Hastings, under color, that the nabob had completed his twentieth year, and had desired to be in the entire and uncontrolled management of his own affairs, (did) . . . remove the said Mahomed Reza Khan from all his offices, and . . . notwithstanding his late pretended opinion of the fitness and right of the nabob to the sole administration of his own affairs, authoritatively forbid him from any interference therein. . . . That the court of directors, on receiving an account of the above arrangements . . . did, in a clear, firm and decisive manner express their condemnation, (and) . . . did order and direct . . . that 'you forthwith signify to the nabob . . . our pleasure that Mahomed

Reza Khan be immediately restored to his office of naib soubadar; and we further direct that Mahomed Reza Khan be again assured of the continuance of our favours, so long as a firm attachment to the interests of the Company, and a proper discharge of the duties of his station shall render him worthy of our protection.' . . . That the said Hastings ought to have yielded a cheerful obedience thereto . . . yet the said Hastings . . . did dissent from the same, and he did encourage the said nabob (and others) . . . to oppose himself and themselves to the authority of the said Court of Directors; by which means . . . the aforesaid corrupt system was continued; Mahomed Reza Khan was not restored to his office; and a lesson was taught to the natives of all ranks that . . . the decided authority of the Court of Directors were wholly nugatory to their protection against the corrupt influence of their servants. That the said Warren Hastings on a reconciliation with Mr. Francis, one of the council-general . . . did, of his own authority and that of the board, restore Mahomed Reza Khan to his offices. That soon after the departure of the said Mr. Francis, he did again deprive the said Mahomed Reza Khan of his said offices (and though directed by the company to account for moneys received, neglected so to do). . . . Accordingly, no relation whatsoever has been received by the Court of Directors of the said nabob's affairs; nor any account of the money monthly paid, except from public fame, which reports that his affairs are in great disorder, his servants unpaid, and many of them dismissed, and all the Musselmen dependent on his family in a state of indigence."

18th. "That Shah Allum, the prince commonly called the Great Mogul . . . was in the possession of the ancient capital of Hindostan; and though without any considerable territory, and without a revenue sufficient to maintain a moderate state, he is still much respected and considered; and the custody of his person is eagerly sought by many of the princes of India, on account of the use to be made of his title and authority; and it was for the interest of the East India Company . . . that he should be treated with friendship, good faith, and respectful attention. That Warren Hastings, in contradiction to this safe, just and honorable policy, strongly prescribed and enforced by the orders of the Court of Directors, did . . . concur with the captain-general of the Mahratta state called Madajee Scindia, in hostile designs against the few remaining territories of that same Mogul emperor, by virtue of whose grant the company actually possess the government, and enjoy the revenues, of great

provinces. . . . That after having concurred in the manner before mentioned, in the designs of the Mahrattas against the Mogul . . . the said Warren Hastings . . . did carry on certain private and dangerous intrigues for various purposes, particularly for making war in favor of the said king, against some powers or princes not precisely described, but which, as may be inferred from a subsequent correspondence, with certain Mahomedan princes in the neighborhood of Delhi in amity with the company, and some of them at that time in the actual service and in the apparent confidence and favor of the said Mogul. . . . That the said Hastings having early in the year 1784 procured to himself a deputation to act in the upper provinces, the council being well aware of his disposition to engage in unwarrantable designs against the neighboring states, did expressly confine his powers to the circumstances of his actual residence within the company's provinces; but it appears that ways were found out by which he hoped to defeat the precautions of the Board. . . . That the said Warren Hastings, still pursuing his said evil designs, did apply to the council for discretionary powers relative to the intrigues and factions in the Mogul's court, giving assurances of his resolution not to proceed against their sense; but the said council . . . did refuse to grant the said discretionary powers . . . observing 'that the company's orders are positive against their interference in the objects of dispute between the country powers.' That in order to subvert the plain and natural interpretation given by the council to the orders of the Court of Directors, and to justify his dangerous intrigues, the said Warren Hastings . . . did, in a most insolent and contemptuous manner, endeavor to persuade them of their ignorance of the true sense of their own orders, and to limit their prohibition of interference with the disputes of the country powers to such country powers as are permanent. . . . That the said Hastings, further to persuade the court of directors to involve themselves in the affairs of the Mogul . . . did write to them . . . 'that if it, (the Mogul's, authority), is suffered to receive its final extinction, it is impossible to foresee what power may arise out of its ruins, or what events may be linked in the same chain of revolution with it; but your interests may suffer by it, your reputation certainly will.' . . . That the other members of the council-general having abundantly certified their averseness to his intrigues, and even shown their apprehension of his going to the Mogul and the Mahrattas for the purpose of carrying on the same, the said Hastings was driven headlong to acts which did much more

openly indicate the true purpose of his machinations; for he at length recurred directly, and with little disguise, to the Mahrattas, and did open an intrigue with them. . . . That in further pursuit of the same pernicious design, he, the said Warren Hastings, did enter into an agreement to withdraw a very great body of British troops out of the nabob's dominions; asserting . . . that he did this not only avowedly to aggrandize the Mahratta state, and weaken the defence upon the frontier, but did as avowedly detain their captain-general in force on that very frontier, notwithstanding that he was well apprised that they had designs against those dependent territories of Oude. . . . That in consequence of all the before recited intrigues, the Mogul emperor being in the hands of the Mahrattas . . . has been obliged to declare the head of the Mahratta state to be vice-regent of the Mogul empire, an authority which supersedes that of vizier, and has thereby consolidated in the Mahratta state all the powers acknowledged to be of legal authority in India; in consequence of which they have acquired, and have actually already attempted to use, the said claims of general superiority against the company itself. . . . That in the whole of the letters, negotiations, proposals and projects of the said Warren Hastings, relative to the Mogul, he did appear to pursue but one object, namely, the aggrandizement of the lately hostile and always dangerous power of the Mahrattas; and did pursue the same by means wholly dishonorable to the British character for honour, justice, candour, plain dealing, moderation and humanity."

19th. "That Warren Hastings, Esq., was, during the whole of the year 1783, a servant of the East India Company, and was bound by the duties of that relation not only to yield obedience to the orders of the court of directors, but to give to the whole of their service an example of submission, reverence and respect to their authority; . . . and to treat the said Court of Directors, his lawful masters, with respect. That the said Warren Hastings did print and publish, or cause to be printed and published at Calcutta in Bengal, the narrative of his transactions at Benares . . . in order to pre-occupy the judgment of the servants in that settlement, and to gain from them a factious countenance and support, previous to the judgment and opinion of the court of directors, his lawful superiors. . . . That he, the said Warren Hastings, among other insolent and contumacious charges and aspersions on the court of directors, did address them in a printed letter . . . (in language ill becoming that of a servant of the company, and) did also presume

to censure and asperse the court of directors for the moderate terms in which they had expressed their displeasure against him, as putting him to the necessity of stating in his defence a strong accusation against himself. . . . That the said Hastings, being well aware that his own declarations did contain the clearest condemnation of his own conduct from his own pen, did, in the said libel, attempt to overturn, frustrate, and render of none effect, all the proofs to be given of prevarication, contradiction, and opposition of action to principle, which can be used against men in public trust, and . . . in order to draw the lawful dependence of the servants of the company from the court of directors to a factious dependence on himself, did, in the libel aforesaid, treat the acts and appointments of their undoubted authority, when exercised in opposition to his arbitrary will, as ruinous to their affairs. . . . That further to emancipate others than himself from due obedience to the court of directors, he did, in the libel aforesaid, enhance his services; which, without specification or proof, he did suppose in the said libel to be important and valuable, by representing them to be done under their displeasure. . . . And the said Hastings, further to render the authority of the said court perfectly contemptible, doth, in a strain of exultation for his having escaped out of a measure from which by his guilt he had involved the company in a ruinous war, and out of which it had escaped by a sacrifice of almost all the territories before acquired (from that enemy which he had made) either by war, or former treaties, and by the abandoning the company's allies to their mercy, attribute the said supposed services to his acting in such a manner as had on former occasions excited their displeasure. . . . That in order further to excite the spirit of disobedience in the company's servants to the lawful authority set over them, he, the said Warren Hastings, did treat contemptuously and ironically the supposed disposition of the company's servants to obey the orders of the court of directors, (and) . . . said Warren Hastings did attempt to justify his publication of the said libellous letter to and against the court of directors by asserting therein that those resolutions (meaning the resolutions of the court of directors, relative to the rajah of Benares) 'were either published or intended for publication'; evidently proving, that he did take this unwarrantable course without any sufficient assurance that the ground and motive by him assigned had any existence."

20th. "That by an act passed in 1773, it was expressly ordered and provided, 'that it should not be lawful for any president and council at Madras, Bombay, or Bencoolen, for the time

being, to make any orders for commencing hostilities, or declaring or making war against any Indian princes or power, or for negotiating or concluding any treaty of peace, or other treaty, with any such Indian prince or powers, without the consent and approbation of the governor-general and council first had and obtained, except in such cases of imminent necessity as would render it dangerous to postpone said hostilities or treaties.' . . . That nevertheless the president and council of Bombay did . . . without the consent and approbation of the governor-general and council of Fort William, and in the midst of profound peace, commence an unjust and unprovoked war against the Mahratta government; did conclude a treaty with a certain person, a fugitive from that government, and prescribed by it, named Ragonaut Row or Ragoba; and did, under various base and treacherous pretences, invade and conquer the island of Salsette, belonging to the Mahratta government. That Warren Hastings on the first advices received in Bengal of the above transactions, did condemn the same in the strongest terms. . . . And the governor-general and council, in order to put a stop to the said unjust hostilities, did appoint an ambassador to the peshwa or chief of the Mahratta state, residing at Poona, and the said ambassador did, after a long negotiation, conclude a definitive treaty of peace with the said peshwa on terms highly honorable and beneficial to the East India Company. . . . That it was the special duty of the said Warren Hastings, derived from a special trust reposed in him, and power committed to him by act of parliament, to have restrained, as by law he had authority to do, the subordinate presidency of Bombay, from entering into hostilities with the Mahrattas, or from making engagements, the manifest tendency of which was to enter into those hostilities, and have put a stop to them if such had been begun. . . . That the said Warren Hastings, . . . instead of fixing his attention to the preservation of peace throughout India, as it was his duty to have done, did continue to abet, encourage, and support the dangerous projects of the presidency of Bombay, and did thereby manifest a determined intention to disturb the peace of India, by the unfortunate success of which intention, and by the continued efforts of the said Hastings, the greater part of India has been for several years involved in a bloody and calamitous war. . . . That through the whole of these transactions the said Warren Hastings has been guilty of continued falsehood, fraud, contradiction, and duplicity, highly dishonorable to the character of the British nation; that in consequence of the unjust and ill-

concerted schemes of the said Hastings, the British arms, heretofore respected in India, have suffered repeated disgraces, and great calamities have thereby been wrought upon India; and that the said Warren Hastings, as well in exciting and promoting the late unprovoked and unjust war against the Mahrattas, as in the conduct thereof, has been guilty of sundry high crimes and misdemeanors. That by the definitive treaty of peace concluded with the Mahrattas . . . the Mahrattas gave up all right and title to the island of Salsette, . . . did also give up to the English company forever all right and title to their entire shares of the city and purgunnah of Broach; did also give forever to the English company a country of three lacks of rupees revenue near to Broach; and did also agree to pay to the company twelve lacks of rupees, in part of the expense of the English army; and that the terms of the said treaty were honorable and advantageous to the India Company. That Warren Hastings, having broken the said treaty and forced the Mahrattas into another war, by a repeated invasion of their country, and having conducted that war in a manner hereinbefore described, did . . . conclude another treaty of perpetual friendship and alliance with the Mahrattas, and . . . did consent and agree to other articles utterly dishonorable to the British name and character, having sacrificed or abandoned every one of the native princes, who, by his solicitations and promises had been engaged to take part with us in the war. . . . That the said Warren Hastings, having broken a solemn and honorable treaty of peace by an unjust and unprovoked war; having neglected to conclude that war when he might have done it without loss of honor to the nation; having plotted and contrived as far as depended upon him, to engage the India Company in another war, as soon as the former should be concluded; and having at last put an end to the unjust war against the Mahrattas by a most ignominious peace with them, in which he sacrificed objects essential to the interests, and submitted to conditions utterly incompatible with the honor of this nation . . . has by these several acts been guilty of sundry high crimes and misdemeanors."

21st. "That by an act of the 13th year of the present majesty . . . 'The governor-general and council are required and directed to pay due obedience to all such orders as they shall receive from the court of directors . . . and to correspond from time to time, and constantly and diligently transmit to the said court an exact particular of all advices or intelligence, and of all transactions and matters whatsoever, that shall come to

their knowledge, relating to the government, commerce, revenues, or interests of the said united company.' That, in consequence of the above recited act, the court of directors . . . did direct, 'that the correspondence with the princes or country powers in India should be carried on through the governor-general only'; but that all letters to be sent by him should be first approved in council; and that he should lay before the council, at their next meeting, all letters received by him in the course of such correspondence for their information. . . . That in defiance to the said orders, and in breach of the above recited act of parliament, said Warren Hastings had in sundry instances, concealed from his council the correspondence carried on between him and the princes or country powers in India, and neglected to communicate the advices and intelligence he from time to time received. . . . That, moreover, the said Warren Hastings . . . has withheld from the court of directors, upon sundry occasions, copies of the proceedings had, and the correspondence carried on by him in his official capacity, as governor-general, whereby the court of directors have been kept in ignorance of matters which it highly imported them to know, and the affairs of the company have been exposed to much inconvenience and injury. That in all such concealments and acts done or ordered without the consent and authority of the supreme council, the said Warren Hastings has been guilty of high crimes and misdemeanors."

22nd. "That the nabob Fyzoola Khan, who now holds of the vizier the territory of Rampore, Shawabad, and certain other districts dependent thereon, in the country of the Rohillas, is the second son of a prince . . . some time sovereign of all that part of Rohilcund, which is particularly distinguished by the appellation of the kutteehr. That . . . (being) then a prisoner of war . . . the nabob Fyzoola Khan was from necessity compelled to waive his hereditary rights for the inconsiderable districts of Rampore and Shawabad, then estimated to produce from six to eight lacks of annual revenue. . . . That so great was the confidence of the nabob Fyzoola Khan in the just, humane, and liberal feelings of Englishmen, (that) . . . he declined the invitation of the Mogul to join the arms of his majesty and the Mahrattas, 'refused any connection with the Seiks,' and did even neglect to take the obvious precaution of crossing the Ganges . . . while the river was yet fordable, a movement which would have enabled him certainly to baffle all pursuit. . . . That the commander-in-chief . . . 'thought nothing could be more honorable to this nation than

the support of so exalted a character' . . . urging to the said Hastings sundry good and cogent arguments of policy and prudence in favor of the said Nabob Fyzoola Khan. . . . That in answer to said laudable wish of said commander-in-chief, the said Warren Hastings preferring his own prohibited plans of extended dominion (wrote) . . . 'With respect to Fyzoola Khan he appears not to merit our consideration. The petty sovereign of a country estimated at six or eight lacks ought not for a moment to prove an impediment to any of our measures or to affect the consistency of our conduct.' . . . That notwithstanding the culpable and criminal reluctance of the President Hastings . . . a treaty of peace and friendship between the Vizier Shuja ul Dowla and the Nabob Fyzoola Khan was finally signed and sealed. . . . By the said treaty the Nabob Fyzoola Khan was established in the quiet possession of Rampore, Shawabad, and some other districts dependent thereon. . . . That during the life of the Vizier Shuja ul Dowla, and for some time after his death, under his son and successor Aseph ul Dowla, the Nabob Fyzoola Khan did remain without disturbance or molestation, (and) . . . did principally apply himself to 'improve the state of the country; and did, by his own prudence and attention, increase the revenues thereof.' " That trouble having arisen with the said Aseph ul Dowla, the said Fyzoola Khan did ask the company to "guarantee the observance of the treaty existing between the vizier and Fyzoola Khan . . . which proposition was resolved in the affirmative. . . . That agreeably to the resolution of council hereinbefore recited, the solicited guarantee . . . was transmitted, together with the renewed treaty . . . and they were . . . presented to the Nabob Fyzoola Khan, with a solemnity not often parallelled. . . . That whether the guarantee aforesaid was or was not necessary; whether it created a new obligation, or but more fully recognized an obligation previously existing, the governor-general, Warren Hastings, by the said guarantee did, in the most explicit manner, pledge and commit the public faith of the company, and the nation . . . more particularly binding the said Hastings personally to exact the due observance of the said treaty, especially to protect the Nabob Fyzoola Khan against any arbitrary construction, or unwarranted requisition of the vizier. . . . That notwithstanding his own private honor thus deeply engaged, notwithstanding the public justice and generosity of the company and the nation thus solemnly committed, disregarding the plain import and positive terms of the guaranteed treaty, the governor-general,

Warren Hastings, . . . did recommend to the vizier 'to require from Fyzoola Khan the quota of troops stipulated by treaty to be furnished by the latter for his (the vizier's), service, being five thousand horse, though, as the vizier did not march in person he was not, under any construction of the treaty, entitled by stipulation to more than two or three thousand troops,' horse and foot, 'according to the ability of Fyzoola Khan.' . . . That the vizier himself appears by no means to have been persuaded of his own right to five thousand horse under the treaty. . . . That the vizier actually did make his application to Fyzoola Khan for the five thousand horse, not as for an aid, to which he had a just claim, but as for something over and above the obligation of the treaty. (Nevertheless the said Warren Hastings) in a style unusually imperative, proceeded as follows: 'Demand immediate delivery of three thousand cavalry; and if he should evade or refuse compliance, that the deputies shall deliver him a formal protest against him for breach of treaty,' (though) he, the said Hastings, well knew that a compliance therewith on the part of the Nabob Fyzoola Khan, was utterly impossible. . . . That the governor-general, Warren Hastings, . . . did enter into a treaty with the vizier at Chunar . . . the third article (of which) is as follows, 'That as Fyzoola Khan has by his breach of treaty forfeited the protection of the English government, and causes by his continuance of his present independent state great alarm and detriment to the nabob vizier, he be permitted, when the time shall suit, to resume his lands, and pay him in money, through the resident, the amount stipulated by treaty, after deducting the amount and charges of the troops he stands engaged to furnish by treaty.' . . . That it thus tends to hold out to India, and to the whole world, that the public principle of the British government is a deliberate system of injustice, joined with falsehood; of impolicy, of bad faith, and treachery; and that the said article is therefore in the highest degree derogatory to the honor, and injurious to the interests, of the nation. . . . That after much negotiations the Nabob Fyzoola Khan . . . did at length agree with Major Palmer to give fifteen lacks or £150,000 and upwards, by four installments, that he might be exempted from all future claims of military service. . . . That the said Warren Hastings did now clearly and explicitly understand the clauses of the treaty, 'that Fyzoola Khan should send two or three (and not five) thousand men, to attend in person in case it was requisite.' That the said Warren Hastings did now confess, that the right of the vizier, under the treaty was at best

'but a precarious and unserviceable right; and that he thought fifteen lacks or £150,000 and upwards an ample equivalent.' . . . And finally, that the said Hastings did give the following description of the Nabob Fyzoola Khan: 'The rumors which had been spread of his hostile designs against the vizier, were totally groundless, and if he had been inclined, he had not the means, to make himself formidable; on the contrary, being in the decline of life and possessing a very fertile and prosperous jaghire, it is more natural to suppose that Fyzoola Khan wishes to spend the remainder of his days in quietness, than that he is preparing to embark in active and offensive scenes, which must end in his own destruction.' Yet that, notwithstanding this virtual and implied crimination in his whole conduct toward the Nabob Fyzoola Khan, and after all the aforesaid acts systematically prosecuted in open violation of a positive treaty against a prince, who had a hereditary right to more than he actually possessed, for whose protection the faith of the company and the nation was repeatedly pledged, and who had deserved and obtained the public thanks of the British government, when, in allusion to certain of the said acts, the court of directors had expressed to the said Hastings their wishes 'to be considered rather as the guardians of the honor and property of the native powers, than as the instrument of oppression,' he, the said Hastings, in reply to the said directors, his masters, did conclude his official account of the final settlement with Fyzoola Khan, with the following indecent, because unjust, exultation: 'Such are the measures which we shall ever wish to observe towards our allies or dependents upon our frontiers.' "

This impeachment, which took nearly seven years to try, resulted in the acquittal of the defendant.

IMPEACHMENT OF LORD VISCOUNT MELVILLE, 29 Howell's State Trials 550 (1806).

Charge: High Crimes and Misdemeanors.

1st. That "whilst he held and enjoyed the said office of treasurer of his majesty's navy, he . . . did take and receive from and out of the money imprested to him as treasurer of his majesty's navy, from his majesty's Exchequer, the sum of £10,000, or some other large sum or sums of money, and did fraudulently and illegally convert and apply the same to his own use, or to some other corrupt and illegal purposes."

2nd. That while such treasurer he did "connive at and permit and suffer the said Alexander Trotter . . . illegally to draw, receive and take, from the governor and company of the

Bank of England, for other purposes than for immediate application for navy services, large sums of money, and . . . did connive at and permit and suffer the said Alexander Trotter to place the last-mentioned sums of money, or a great part thereof, so illegally drawn and received, and taken by him from the governor and company of the Bank of England as aforesaid, in the hands of Messieurs Thomas Coutts & Company, the private bankers of the said Alexander Trotter, in his own name, and subject to his sole control and disposition."

3rd. That while such treasurer he did "fraudulently and illegally permit and suffer the said Alexander Trotter to place many of the said sums of money so drawn, received and taken by him from the governor and company of the Bank of England as aforesaid, in the hands of Messieurs Coutts & Company, the private bankers of the said Alexander Trotter, in his own name and at his own disposal, and the said Alexander Trotter did thereupon, with the privity, by the connivance, and with the permission of the said Henry Lord Viscount Melville, apply and use the said last mentioned sums of money, or great part thereof, for purposes of private advantage or interest, profit and emolument."

4th. That "the said Alexander Trotter, did, with the privity, or by the connivance and permission of the said Henry Lord Viscount Melville, place sums of money, issued from his majesty's Exchequer unto the governor and company of the Bank of England, on account of the treasurer of his majesty's navy, . . . in the hands of Mark Sprott, and other persons, and did apply and use the same for purposes of private advantage or interest, profit and emolument, or for purposes other than navy purposes."

5th. That, "he the said Henry Lord Viscount Melville did fraudulently and illegally, for the purpose of advantage or interest to himself, or for acquiring or obtaining profit or emolument therefrom, or for some other corrupt and illegal purposes, and for purposes other than navy services, take and receive from the public money . . . the sum of £10,000 or some other large sum or sums of money, and did fraudulently and illegally convert and apply the same to his own use, or to some other corrupt and illegal purposes."

6th. That for the purpose of "fraudulently concealing the illegal use and application" of said money, he entered into a corrupt agreement with the said Alexander Trotter, by which they "resolved and agreed mutually to cancel and destroy, all the vouchers and other memorandums and writings that at any time heretofore might have existed, passed, or been interchanged be-

tween them relative to the said accounts, and the different items and articles which the said accounts were composed or consisted; and the said books of accounts, . . . vouchers, or other memorandums and writings, . . . were burnt and destroyed, . . . with a view to conceal and prevent the discovery of the several advances of money made by the said Alexander Trotter to the said Henry Lord Viscount Melville."

7th. That he "did obtain, and receive a sum of £22,000, or some other large sum or sums of money advanced to him by the said Alexander Trotter; and for which it has been alleged by the said Henry Lord Viscount Melville, that he was to pay interest; and for the purpose of more effectually concealing the said last-mentioned advances of money, the said books of account, vouchers, memorandums, and writings, were so as aforesaid burnt and destroyed."

9th. That "the said Alexander Trotter would not have been and was well known to the said Henry Lord Viscount Melville, not to have been able to make such advances of money to the said Henry Lord Viscount Melville as aforesaid, otherwise than from and by means of the said sums of public money so drawn by the said Alexander Trotter from the Bank of England, with the privity, connivance, and permission of the said Henry Lord Viscount Melville as aforesaid, and applied by the said Alexander Trotter for purposes of private advantage, interest, profit and emolument."

The defendant was tried and acquitted.

IMPEACHMENT OF WILLIAM BLOUNT, Wharton's State Trials of the United States 200 (1797).

Charge: High Crimes and Misdemeanors.

1st. "That whereas, the United States . . . were at peace with his Catholic Majesty, the King of Spain; and whereas . . . his said Catholic Majesty and the King of Great Britain were at war with each other, yet the said William Blount . . . then being a senator of the United States and well knowing the premises, but disregarding the duties and obligations of his high station, and designing and intending to disturb the peace and tranquility of the United States, and to violate and infringe the neutrality thereof, did conspire and contrive to create, promote and set on foot within the jurisdiction and territory of the United States, and to conduct and carry on, from thence, a military hostile expedition against the territories and dominions of his said Catholic Majesty in the Floridas and Louisiana, or a part thereof, for the purpose of wresting the same from his Catholic Majesty and of conquering the same for the King of Great Britain."

2nd. That in furtherance of his said purpose he "did conspire and contrive to excite the Creek and Cherokee nations of Indians, then inhabiting within the territorial boundary of the United States, to commence hostilities against the subjects and possessions of his Catholic Majesty in the Floridas and Louisiana, for the purpose of reducing the same to the dominion of the King of Great Britain."

3rd. That further "in the prosecution of his criminal designs and of his conspiracies aforesaid, and the more effectually to accomplish his intention of exciting the Creek and Cherokee nations of Indians, to commence hostilities against the subjects of his said Catholic Majesty, he did further conspire and contrive to alienate and divert the confidence of the said Indian tribes or nations from the said Benjamin Hawkins, the principal temporary agent aforesaid, and to diminish, impair and destroy the influence of the said Benjamin Hawkins with the said Indian tribes, and their friendly intercourse and understanding with him."

4th. That in further "prosecution of his criminal designs, and in furtherance of his conspiracies aforesaid, (he) did conspire and contrive to seduce the said James Carey from the duty and trust of his said appointments (as interpreter to said Indians), and to engage the said James Carey to assist in the pro-

motion and execution of his said criminal intentions and conspiracies aforesaid."

5th. That he "did further conspire and contrive to diminish and impair the confidence of the said Cherokee nation in the government of the United States, and to create and foment discontents and dissentions among the said Indians, toward the government of the United States in relation to the ascertainment and marking of the boundary line" which "separate the lands and possessions of the said Indians from the lands and possessions of the United States and the citizens thereof."

After an elaborate argument, the proceedings were dismissed upon the ground that the defendant, though a senator of the United States, was not a civil officer thereof, within the meaning of the clause in the Constitution relating to impeachments.

IMPEACHMENT OF JOHN PICKERING, Annals of Congress, 1st Session, 8th Congress, 319 (1804).

Charge: High Crimes and Misdemeanors.

1st. "That whereas George Wentworth, surveyor of the District of New Hampshire did, in the Port of Portsmouth . . . seize the ship called the Eliza, . . . together with her furniture, tackle, and apparel, alleging that there had been unladen from on board of said ship, contrary to law, sundry goods, wares, and merchandise of foreign growth and manufacture; . . . and whereas Thomas Chadbourne, a deputy marshall of said district, did, . . . by virtue of an order of the said John Pickering, judge of the District Court, of the said District of New Hampshire, arrest and detain in custody, for trial, before the said John Pickering, judge of the said district court, the said ship called the Eliza, with her furniture, tackle and apparel; . . . and whereas by an act of Congress . . . it is among other things provided, that . . . 'if the claimant shall with one or more sureties to be approved by the court, execute a bond in the usual form to the United States, for the payment of a sum equal to the sum of which the ship or vessel, goods, wares, or merchandise were appraised . . . and moreover produce a certificate from the collector of the district wherein such trial is had, and of the naval officer thereof, if any there be, that the duties . . . have been paid or secured, in like manner as if the goods, wares or merchandise, ship or vessel, had been legally entered, the court shall, by rule order such ship or vessel, goods, wares or merchandise to be delivered to the said claimant.' Yet the said John Pickering

. . . with intent to evade the same, did order the said ship called the Eliza, with her furniture, tackle and apparel, . . . to be delivered to a certain Eliphalet Ladd, who claimed the same, without his . . . producing any certificate from the collector and naval officer of the said district . . . contrary to his trust and duty as judge of the said district court."

2nd. "That whereas, at a special district court of the United States, begun and held at Portsmouth . . . by John Pickering, judge of said court, the United States . . . having libelled, propounded and given the said judge to understand and be informed, that the said ship Eliza with her furniture, tackle and apparel, had been seized as aforesaid . . . and having prayed in their said libel that the said ship, with her furniture, tackle and apparel, might, by the said court, be adjudged to be forfeited to the United States, and be disposed of according to law, and a certain Eliphalet Ladd . . . having come into the said court, and having claimed said ship Eliza, with her furniture, tackle and apparel; . . . the said John Pickering, judge of the said district court, did proceed to the hearing and trial of the cause; . . . and whereas John S. Sherburne, attorney for the United States . . . did appear in the said district court, as his special duty it was by law, to prosecute the said cause in behalf of the United States, and did produce sundry witnesses to prove the facts charged by the United States, . . . and did pray the said court that the said witnesses might be sworn in behalf of the United States, yet the said John Pickering, being then judge of the said district court, and then in court sitting, with intent to defeat the just claims of the United States, did refuse to hear the testimony of the said witnesses, . . . and . . . did order and decree the said ship Eliza, with her furniture, tackle and apparel to be restored to the said Eliphalet Ladd, the claimant, contrary to his trust and duty, as judge of the said district court."

3rd. "That whereas . . . the said John S. Sherburne, . . . did, in the name and on behalf of the United States, claim an appeal from the said decree of the district court, to the next circuit court, . . . and did pray the said district court to allow the said appeal, . . . yet the said John Pickering, judge of the said district court, disregarding the authority of the laws, wickedly meaning and intending to injure the revenues of the United States, and thereby to impair their public credit, did absolutely and positively refuse to allow the said appeal, . . . contrary to his trust and duty as judge of the said district court."

4th. "That whereas, for the due, faithful and impartial administration of justice, temperance and sobriety are essential qualities in the character of a judge, yet the said John Pickering, being a man of loose morals and intemperate habits . . . did appear upon the bench of the said court for the purpose of administering justice, in a state of total intoxication . . . and did then and there frequently, in a most profane and indecent manner, invoke the name of the Supreme Being, to the evil example of all the good citizens of the United States, and was then and there guilty of other high misdemeanors, disgraceful to his own character as a judge, and degrading to the honor and dignity of the United States."

He was tried, convicted, and sentenced to "be removed from the office of judge of the district court of the district of New Hampshire."

IMPEACHMENT OF SAMUEL CHASE, 11 Law Trials 5 (1805).

Charge: High Crimes and Misdemeanors.

1st. "That unmindful of the solemn duties of his office, and contrary to the sacred obligation by which he stood bound to discharge them 'faithfully and impartially, and without respect to persons,' the said Samuel Chase, on the trial of John Fries, charged with treason, . . . did, in his judicial capacity, conduct himself in a manner highly arbitrary, oppressive and unjust, viz.:

(1) In delivering an opinion, in writing, on the question of law, on the construction of which the defence of the accused materially depended, tending to prejudice the minds of the jury and . . . before counsel had been heard in his defence.

(2) In restricting the counsel for the said Fries from recurring to such English authorities as they believed apposite, or from citing certain statutes of the United States which they deemed illustrative.

(3) In debarring the prisoner from his constitutional privilege of addressing the jury (through his counsel), on the law, as well as on the facts."

2nd. "That, prompted by a similar spirit of persecution and injustice, at a circuit court of the United States . . . before which a certain James Thompson Callender was arraigned for a libel on John Adams, then President of the United States, the said Samuel Chase, with intent to oppress and procure the conviction of the said Callender, did overrule the objection of John Basset, one of the jury, who wished to be excused from serving on the said trial, because he had made up his mind."

3rd. "That with intent to oppress and procure the conviction of the prisoner, the evidence of John Taylor, a material witness on behalf of the aforesaid Callender, was not permitted by the said Samuel Chase to be given in, on pretence that the said witness could not prove the truth of the whole of one of the charges, contained in the indictment, although the said charge embraced more than one fact."

4th. "That the conduct of the said Samuel Chase was marked, during the whole of the said trial, by manifest injustice, partiality, and intemperance: viz.:

(1) In compelling the prisoner's counsel to reduce to writing, and submit to the inspection of the Court, for their admission or rejection, all questions which the said counsel meant to propound to the above-named John Taylor, the witness.

(2) In refusing to postpone the trial, although an affidavit was regularly filed, stating the absence of material witnesses on behalf of the accused.

(3) In the use of unusual, rude and contemptuous expressions towards the prisoner's counsel; and in falsely insinuating that they wished to excite the public fears and indignation, and to produce that insubordination to law, to which the conduct of the Judge did, at the same time, manifestly tend.

(4) In repeated and vexatious interruptions of the said counsel . . . which, at length, induced them to abandon their case and their client, who was thereupon convicted and condemned to fine and imprisonment.

(5) In an indecent solicitude . . . for the conviction of the accused, unbecoming even a public prosecutor, but highly disgraceful to the character of a judge, as it was subversive to justice."

5th. In that in violation of the laws of Virginia he did "award a capias against the body of the said James Thompson Callender, indicted for an offence not capital, whereupon the said Callender was arrested and committed to close custody" instead of proceeding by a summons, as by law provided.

6th. In that in violation of the law of Virginia which provides that "in cases not capital, the offender shall not be held to answer any presentment of the grand jury until the court next succeeding that during which said presentment shall have been made, yet the said Samuel Chase, with intent to oppress and procure the conviction of the said James Thompson Callender, did . . . adjudge the said Callender to trial, during the term at which he, the said Callender, was presented and indicted."

7th. That in another case he "did descend from the dignity of a judge and stoop to the level of an informer, by refusing to discharge the grand jury, although entreated by several of the said jury so to do; and by . . . observing to the said grand jury that he, the said Samuel Chase understood 'that a highly seditious temper had manifested itself in the State of Delaware, among a certain class of people, . . . more especially in the town of Wilmington, where lived a most seditious printer . . . it becomes your duty, gentlemen, to enquire diligently into this matter,' or words to that effect; and that with intention to procure the prosecution of the printer in question, the said Samuel Chase did, moreover, authoritatively enjoin on the District Attorney of the United States . . . to find some passage which might furnish the ground work of the prosecution against the printer of said paper."

8th. That in still another case he delivered to the "grand jury an intemperate and inflammatory political harangue, with intent to excite the fears and resentment of the said grand jury, and the good people of Maryland against their State government, and constitution, a conduct highly censurable in any, but particularly indecent and unbecoming in a judge of the United States: and moreover . . . in a manner highly unwarrantable . . . delivered opinions, which even if a judicial authority were competent to their expression, on a suitable occasion and in a proper manner, were at that time and as delivered by him, highly indecent, extra-judicial and tending to prostitute the high judicial character with which he was invested, to the low purpose of an electioneering partisan."

He was tried and acquitted.

IMPEACHMENT OF JUDGE JAMES H. PECK, 10 Law Trials 49 (1830).

Charge: High Misdemeanors in Office.

"That the said James H. Peck, judge of the District Court of the United States for the District of Missouri . . . did . . . render a final decree of the said court in favor of the United States, and against the claim of the petitioners, in a certain matter or cause pending in the said court. . . . And the said petitioners did . . . appeal against the United States, from the judgment and decree so made and entered in the said matter to the Supreme Court of the United States. . . . And the said James H. Peck, after the said matter or cause had been so duly appealed, . . . did cause to be published in a certain public newspaper, printed at the City of St. Louis, called

'The Missouri Republican,' prepared by the said James H. Peck, purporting to be the opinion of the said James H. Peck, as judge of the said court, in the matter or cause aforesaid, and purporting to set forth the reasons of the said James H. Peck, as such judge, for the said decree; and that Luke Edward Lawless, a citizen of the United States and an attorney and counsellor in the said district court, and who had been of counsel for the said petitioners, did . . . cause to be published in a certain other newspaper, . . . a certain article signed 'A Citizen,' and purporting to contain an exposition of certain errors of doctrine and fact alleged to be contained in the opinion of the said James H. Peck. . . . And the said James H. Peck, judge as aforesaid, unmindful of the solemn duties of his station, and that he held the same by the Constitution of the United States, during good behavior only, with intention wrongfully and unjustly to oppress, imprison, and otherwise injure the said Luke Edward Lawless, under color of law, did . . . arbitrarily, oppressively, and unjustly, and under color and pretence that the said Luke Edward Lawless was answerable to the said court for the said publication, signed 'A Citizen,' as for a contempt thereof, institute, in the said court, before him, the said James H. Peck, judge as aforesaid, certain proceedings against the said Luke Edward Lawless, in a summary way, by attachment, issued . . . against the person of the said Luke Edward Lawless, touching the said pretended contempt, under and by virtue of which said attachment the said Luke Edward Lawless was . . . arrested, imprisoned, and brought into court before the said judge, . . . who did afterwards, on the same day, . . . unjustly, oppressively, and arbitrarily, order and adjudge that the said Luke Edward Lawless, for the cause aforesaid, should be committed to prison for a period of 24 hours, and that he should be suspended from practice as an attorney or counsellor at law in the said District Court for the period of 18 calendar months from that day; and did then and there further cause the said unjust and oppressive sentence to be carried into execution."

He was tried and acquitted.

IMPEACHMENT OF JUDGE WEST H. HUMPHREYS, Congressional Globe, 2nd Session, 37th Congress, page 2277 (1862).

Charge: High Crimes and Misdemeanors.

1st. "That regardless of his duties as a citizen of the United States, and unmindful of the duties of his said office, . . .

the said West H. Humphreys . . . then being a citizen of the United States, and owing allegiance thereto, and then and there being judge of the District Court of the United States for the several districts of said State (of Tennessee), . . . at a public meeting . . . held in the city of Nashville, and in hearing of divers persons then and there present, did endeavor by public speech to incite revolt and rebellion within said State against the Constitution and Government of the United States, and did then and there publicly declare that it was the right of the people of said State, by an ordinance of secession, to absolve themselves from all allegiance to the Government of the United States, the Constitution and the laws thereof."

2nd. "That in further disregard of his duties as a citizen of the United States, and unmindful of the solemn obligation of his office as judge . . . with intent to abuse the high trust reposed in him as such judge, and to subvert the lawful authority and Government of the United States within said State, said West H. Humphreys then being judge of the District Court of the United States . . . did, together with other evil-minded persons within said State, openly and unlawfully support, advocate, and agree to an act commonly called an ordinance of secession, declaring the State of Tennessee independent of the Government of the United States, and no longer within the jurisdiction thereof."

3rd. "That . . . the said West H. Humphreys then owing allegiance to the United States of America, and being then district judge of the United States, as aforesaid, did then and there, to wit: within said State, unlawfully, and in conjunction with other persons, organize armed rebellion against the United States, and levy war against them."

4th. "That . . . the said West H. Humphreys, then being judge of the District Court of the United States, as aforesaid, and J. C. Ramsay, and Jefferson Davis, and others, did unlawfully conspire together 'to oppose by force the authority of the Government of the United States.' "

5th. "That the said West H. Humphreys, with intent to prevent the due administration of the laws of the United States, . . . has in gross disregard of his duty as judge . . . neglected and refused to hold the district court of the United States, as by law he was required to do, within the several districts of the State of Tennessee, ever since the first day of July, A. D. 1861."

6th. "That the said West H. Humphreys . . . with intent to subvert the authority of the United States . . . did unlawfully act as judge of an illegally constituted tribunal

within said State, called the District Court of the Confederate States of America, and as judge of said tribunal, . . . then and there assumed and exercised powers unlawful and unjust, to wit; in causing one Perez Dickinson, a citizen of said State, to be unlawfully arrested and brought before him, . . . and required him to swear allegiance to the pretended government of the said Confederate States of America; and upon the refusal of the said Dickinson so to do . . . did unlawfully, and with the intent to oppress said Dickinson, require and receive of him a bond, conditioned that while he should remain within said State he would keep the peace, and as such judge of said illegal tribunal, and without authority of law, said Humphreys then and there decreed that said Dickinson should leave said State.

(2) In decreeing within said State, and as judge of said illegal tribunal, the confiscation to the use of said Confederate States of America of property of citizens of the United States, and especially of property of one Andrew Johnson, and one John Catron.

(3) In causing, as judge of said illegal tribunal, to be unlawfully arrested and imprisoned within said State citizens of the United States because of their fidelity to their obligations as said citizens of the United States."

7th. "That said West H. Humphreys, judge of the District Court of the United States as aforesaid, assuming to act as judge of said tribunal known as the District Court of the Confederate States of America . . . without lawful authority, and with intent to injure one William G. Brownlow, a citizen of the United States, caused said Brownlow to be unlawfully arrested and imprisoned within said State."

He was tried, acquitted on the second specification of the 6th Article, and convicted on all other charges, and sentenced to removal from office, and to be disqualified from thereafter holding any office of honor, trust or profit under the United States.

IMPEACHMENT OF PRESIDENT ANDREW JOHNSON, Supplement to Congressional Globe, 2nd Session, 40th Congress (1868).

1st. That on February 21, 1868, he did "unlawfully and in violation of the Constitution and laws of the United States issue an order in writing for the removal of Edwin M. Stanton from the office of Secretary for the Department of War . . . which order was unlawfully issued with intent then and there to violate" the Tenure of Office Act of March 2, 1867,

"whereby said Andrew Johnson, President of the United States, did then and there commit, and was guilty of a high misdemeanor in office."

2nd. That on February 21, 1868, in violation of the Tenure of Office Act he appointed Brevet Major General Lorenzo Thomas to act as Secretary of War *ad interim,* "there being no vacancy in said office of Secretary for the Department of War; whereby said Andrew Johnson, President of the United States, did then and there commit and was guilty of a high misdemeanor in office."

3rd. That on February 21, 1868, he "did commit and was guilty of a high misdemeanor in office, in this, that without authority of law, while the Senate of the United States was then and there in session, he did appoint one Lorenzo Thomas to be Secretary for the Department of War *ad interim,* without the advice and consent of the Senate, and with intent to violate the Constitution of the United States, no vacancy having happened in said office of Secretary for the Department of War during the recess of the Senate, and no vacancy existing in said office at the time."

4th. That on February 21, 1868, he "did unlawfully conspire with one Lorenzo Thomas, and with other persons to the House of Representatives unknown, with intent by intimidation and threats unlawfully to hinder and prevent Edwin M. Stanton, then and there the Secretary for the Department of War, duly appointed under the laws of the United States, from holding said office . . . contrary to and in violation of the Constitution and Tenure of Office Act, "whereby said Andrew Johnson, President of the United States, did then and there commit and was guilty of a high crime in office."

5th. That on February 21, 1868, and on divers other days before March 2, 1868, he "did unlawfully conspire with Lorenzo Thomas and other persons to the House of Representatives unknown, to prevent and hinder the execution" of the Tenure of Office Act "and in pursuance of said conspiracy did unlawfully attempt to prevent Edwin M. Stanton, then and there being Secretary for the Department of War, duly appointed and commissioned under the laws of the United States, from holding said office, whereby the said Andrew Johnson, President of the United States, did then and there commit and was guilty of a high misdemeanor in office."

6th. That on February 21, 1868, he "did unlawfully conspire with one Lorenzo Thomas by force to seize, take and possess the property of the United States in the Department of War.

and then and there in the custody and charge of Edwin M. Stanton, Secretary for said Department, contrary to the provisions of the 'Act to define and permit certain conspiracies,' approved July 21, 1861," and the Tenure of Office Act, "whereby said Andrew Johnson, President of the United States, did then and there commit a high crime in office."

7th. That on February 21, 1868, he "did unlawfully conspire with one Lorenzo Thomas, with intent unlawfully to seize, take and possess the property of the United States in the Department of War, in the custody and charge of Edwin M. Stanton, Secretary of said Department, with intent to violate and disregard" the Tenure of Office Act "whereby said Andrew Johnson, President of the United States did then and there commit a high misdemeanor in office."

8th. That "with intent to unlawfully control the moneys appropriated for the military service and for the Department of War" on February 21, 1868, he did unlawfully and contrary to the provisions of the Tenure of Office Act, "and in violation of the Constitution of the United States, and without the advice and consent of the Senate of the United States, and while the Senate was then and there in session, there being no vacancy in the office of Secretary for the Department of War . . . then and there issue and deliver to one Lorenzo Thomas a letter of authority in writing" appointing him Secretary of War *ad interim* and directing him immediately to enter upon the duties of that office, "whereby said Andrew Johnson, President of the United States, did then and there commit and was guilty of a high misdemeanor in office."

9th. That on February 22, 1868, "as Commander-in-Chief of the Army of the United States, he did bring before himself then and there William H. Emory, a Major General by brevet in the Army of the United States, actually in command of the department of Washington," and instructed him that so much of the Act of June 30, 1868, as provided that " 'all orders and instructions relating to military operations, issued by the President or Secretary of War, shall be issued through the General of the Army, and in case of his inability, through the next in rank,' was unconstitutional and in contravention of the commission of said Emory . . . with intent thereby to induce said Emory, in his official capacity . . . to violate the provisions of said act, and to take, receive, act upon and obey such orders as he, Andrew Johnson, might make and give, and which should not be issued through the General of the Army . . . and with the further intent thereby to enable him, the said Andrew Johnson,

to prevent the execution of" the Tenure of Office Act, "and to unlawfully prevent Edwin M. Stanton, then being Secretary for the Department of War, from holding said office and discharging the duties thereof, whereby said Andrew Johnson, President of the United States, did then and there commit and was guilty of a high misdemeanor in office."

10th. "That said Andrew Johnson, President of the United States, unmindful of the high duties of his office and the dignities and proprieties thereof, and of the harmony and courtesies which ought to exist and be maintained between the executive and legislative branches of the Government of the United States, designing and intending to set aside the rightful authority and powers of Congress, did attempt to bring into disgrace, ridicule, hatred, contempt, and reproach the Congress of the United States" by certain quoted speeches, "which said utterances, declarations, threats and harangues, highly censurable in any, are peculiarly indecent and unbecoming in the Chief Magistrate of the United States, by means whereof said Andrew Johnson has brought the high office of the President of the United States into contempt, ridicule, and disgrace, to the great scandal of all good citizens, whereby said Andrew Johnson, President of the United States, did commit, and was then and there guilty of, a high misdemeanor in office."

11th. That on August 18, 1866, he did "by public speech, declare and affirm in substance that the 29th Congress of the United States was not a Congress of the United States authorized by the Constitution to exercise legislative powers under the same, but, on the contrary, was a Congress of only part of the States, thereby denying and intending to deny that the legislation of said Congress was valid or obligatory upon him . . . except in so far as he saw fit to approve the same, and also thereby denying and intending to deny the power of said 29th Congress to propose amendments to the Constitution of the United States; and in pursuance of said declaration . . . he did unlawfully and in disregard of the requirements of the Constitution, that he should take care that the laws be faithfully executed, attempt to prevent the execution" of the Tenure of Office Act "by unlawfully devising and contriving, and attempting to devise and contrive means by which he should prevent Edwin M. Stanton from forthwith resuming the functions of the office of Secretary for the Department of War, notwithstanding the refusal of the Senate to concur" in his suspension, "and also by further unlawfully devising and contriving, and attempting to devise and contrive, means then and there to prevent the execution" of the Appropriation Act

of March 2, 1867, and "prevent the execution of an act entitled 'An act to provide for the more efficient government of the rebel States,' approved March 2, 1867; whereby the said Andrew Johnson, President of the United States, did then and there commit and was guilty of a high misdemeanor in office."

The President was acquitted on the 11th, and on a later day on the 2nd and 3rd Articles of Impeachment, whereupon the Senate sitting as a Court of Impeachment adjourned *sine die,* without voting on the other articles.

IMPEACHMENT OF WILLIAM W. BELKNAP, Proceedings of the Senate sitting for the trial of William W. Belknap, 9 (1876).

Charge: High Crimes and Misdemeanors in Office.

1st. "That William W. Belknap, while he was in office as Secretary of War . . . had the power and authority . . . to appoint a person to maintain a trading establishment at Fort Sill, a military post of the United States; . . . that said Belknap, as Secretary of War as aforesaid, . . . promised to appoint one Caleb P. Marsh to maintain said trading establishment at said military post; . . . that the said Caleb P. Marsh and one John S. Evans entered into an agreement" (quoted at length in said article), and thereafter "said Belknap, as Secretary of War as aforesaid, did, at the instance and request of said Marsh . . . appoint John S. Evans to maintain said trading establishment . . . and in consideration of said appointment . . . the said Belknap did . . . unlawfully and corruptly receive from said Caleb B. Marsh the sum of $1500, and that at divers times thereafter . . . at or about the end of each three months during the term of one whole year . . . did unlawfully receive from said Caleb P. Marsh like sums of $1500, in consideration of the appointment of John S. Evans . . . and in consideration of his permitting said Evans to continue to maintain the said trading establishment; . . . whereby the said William W. Belknap, who was then Secretary of War as aforesaid, was guilty of high crimes and misdemeanors in office."

2nd. "That said William W. Belknap, while he was in office as Secretary of War . . . did wilfully, corruptly and unlawfully take and receive from one Caleb P. Marsh the sum of $1500 in consideration" and under the circumstances stated above, and "did corruptly permit the said Evans to continue to maintain the said trading establishment at said military post. And so the said Belknap was thereby guilty while he was Secretary of War, of a high misdemeanor in his said office."

3rd. "That said William W. Belknap was Secretary of War . . . and had authority, under the laws of the United States, to appoint a person to maintain a trading establishment at Fort Sill; . . . that he did . . . appoint one John S. Evans to maintain said trading establishment at said military post (who) has since . . . maintained a trading establishment at said military post, and that said Evans . . . in order to procure said appointment and to be continued therein, agreed with one Caleb P. Marsh that, in consideration that said Belknap would appoint him, the said Evans, to maintain said trading establishment at said military post, at the instance and request of said Marsh, he, the said Evans, would pay to him a large sum of money quarterly in advance, from the date of his said appointment by said Belknap, to wit, $12,000 during the year immediately following . . . and other large sums of money, quarterly, during each year that he, the said Evans, should be permitted by said Belknap to maintain said trading establishment at said post; that said Evans, did pay to said Marsh said sum of money quarterly, and . . . said Marsh, upon the receipt of each of said payments, paid one-half thereof to him, the said Belknap. Yet the said Belknap, well knowing these facts . . . did unlawfully and corruptly continue said Evans in said position. . . . Whereby the said William W. Belknap was, as Secretary of War as aforesaid, guilty of high crimes and misdemeanors in office."

4th. "That said William W. Belknap, while he was in office and acting as Secretary of War, . . . in the exercise of the power and authority vested in him as Secretary of War . . . did appoint one John S. Evans to maintain a trading establishment at Fort Sill, . . . and he, the said Belknap, did receive from one Caleb P. Marsh, large sums of money for and in consideration of his having so appointed said John S. Evans to maintain said trading establishment . . . and for continuing him therein, whereby he has been guilty of high crimes and misdemeanors in said office." (Attached to this article are seventeen different specifications of payment to Secretary Belknap.)

5th. "That one John S. Evans was . . . appointed by the said Belknap to maintain a trading establishment at Fort Sill, and said Belknap did, from that day continuously . . . permit said Evans to maintain the same; and said Belknap was induced to make said appointment by the influence and request of one Caleb P. Marsh; and said Evans paid to said Marsh, in consideration of such influence and request, and in consideration that he should thereby induce said Belknap to make said appointment,

divers large sums of money, amounting to about $12,000 a year from the date of his appointment to the 25th day of March, 1872, and about $6000 a year thereafter until the 2nd day of March, 1876, all which said Belknap well knew; yet said Belknap did, in consideration that he would permit said Evans to continue to maintain said trading establishment, and in order that said payments might continue to be made by said Evans to said Marsh as aforesaid, corruptly received from said Marsh, either to his, the said Belknap's own use or to be paid over to the wife of said Belknap, divers large sums of money at various times (specified), all of which acts and doings were while the said Belknap was Secretary of War as aforesaid, and were a high misdemeanor in said office."

He was acquitted upon the ground that he had resigned his office as Secretary of War, and his resignation had been accepted by the President a couple of hours before the actual adoption of the articles of impeachment by the House.

IMPEACHMENT OF CHARLES SWAYNE (1905).

Charge: High Crimes and Misdemeanors.

1st. That as United States District Judge he falsely certified that his travelling expenses were a round sum of $10 per day, whereas, as he well knew, they were "a far less sum, whereby he has been guilty of a high crime and misdemeanor in his said office."

2nd. That on another occasion he made a like false certificate, and received the money thereon, "wherefore the said Charles Swayne, judge as aforesaid, was and is guilty of a high crime, to wit, the crime of obtaining money from the United States by a false pretense and of a high misdemeanor in office."

3rd. That on another occasion he made a like false certificate, and received the money thereon, "Wherefore the said Charles Swayne, judge as aforesaid, misbehaved himself and was and is guilty of a high crime, to wit, obtaining money from the United States by a false pretense, and of a high misdemeanor in office."

4th. That as such judge he "did unlawfully appropriate to his own use, without making compensation to the owner, a certain railroad car . . . for the purpose of transporting himself, his family and friends . . . the said railroad company being at the time in the possession of a receiver appointed by said Charles Swayne, judge as aforesaid, on the petition of creditors." That the party used the provisions in said car, "and the said Charles Swayne, judge as aforesaid, allowed the credit claimed by the said receivers for and on account of the said expenditure

as a part of the necessary expenses of operating said road. . . . Wherefore the said Charles Swayne, judge as aforesaid, was and is guilty of an abuse of judicial power and of a high misdemeanor in office."

5th. That on another occasion he "did unlawfully appropriate to his own use" without compensation another car of the same road "for the purpose of transporting himself, his family and friends," used the provisions therein, and "allowed the credit claimed by the said receiver for and on account of the said expenditure as a part of the necessary expense of operating said road . . . wherefore the said Charles Swayne, judge as aforesaid, was and is guilty of an abuse of judicial power and of a high misdemeanor in office."

6th. That "being a district judge of the United States for the northern district of Florida," and Congress having so re-arranged the Florida districts that his then residence ceased to be in said northern district, "it became and was the duty of the said Charles Swayne to change his residence and reside in the northern district" as prescribed by Section 551 of the Revised Statutes, yet he "did not acquire a residence and did not . . . reside in said district . . . for a period of six years. Wherefore the said Charles Swayne, judge as aforesaid, wilfully and knowingly violated the aforesaid law, and was and is guilty of a high misdemeanor in office."

7th. That notwithstanding the facts and law last above set forth, he resided elsewhere, though still acting as such judge, for "a period of about nine years. Wherefore the said Charles Swayne, judge as aforesaid, wilfully and knowingly violated the aforesaid law, and was and is guilty of a high misdemeanor in office."

8th. That "while in the exercise of his office as judge" he "did maliciously and unlawfully adjudge guilty of a contempt of court" and fine and imprison one "E. T. Davis, an attorney and counselor at law, for an alleged contempt of the Circuit Court of the United States. Wherefore the said Charles Swayne, judge as aforesaid, misbehaved himself in his office as judge, and was and is guilty of an abuse of power and of a high misdemeanor in office."

9th. That "while in the exercise of his office as judge" he "did knowingly and unlawfully adjudge guilty of a contempt of court" and fine and imprison said E. T. Davis. "Whereupon the said Charles Swayne, judge as aforesaid, misbehaved himself in his office as judge, and was and is guilty of an abuse of judicial power and of a high misdemeanor in office."

10th. That "while in the exercise of his office as judge" he "did maliciously and unlawfully adjudge guilty of a contempt of court" and fine and imprison one "Simeon Belden, an attorney and counselor at law, for an alleged contempt of the Circuit Court of the United States. Wherefore the said Charles Swayne, judge as aforesaid, misbehaved himself in his office as judge, and was and is guilty of an abuse of judicial power, and of a high misdemeanor in office."

11th. That "while in the exercise of his office as judge" he "did knowingly and unlawfully adjudge guilty of a contempt of court" and fine and imprison said Simeon Belden. "Wherefore the said Charles Swayne, judge as aforesaid, misbehaved himself in his office as judge, and was and is guilty of an abuse of judicial power, and of a high misdemeanor in office."

12th. That "while in the exercise of his office as judge" he "did unlawfully and knowingly adjudge guilty of contempt and did commit to prison . . . one W. C. O'Neal, for an alleged contempt of the District Court of the United States for the Northern District of Florida. Whereupon the said Charles Swayne, judge as aforesaid, misbehaved himself in his office of judge as aforesaid, and was and is guilty of an abuse of judicial power, and of a high misdemeanor in office."

He was tried and acquitted.

IMPEACHMENT OF ROBERT W. ARCHBALD (1912).

Charge: High Crimes and Misdemeanors.

1st. That "being a United States circuit judge, and having been duly designated as one of the judges of the United States Commerce Court, and being then and there a judge of the said court . . . he entered into an agreement with one Edward J. Williams . . . to become partners in the purchase of a certain culm dump, commonly known as the Katydid culm dump, . . . for the purpose of disposing of said property at a profit. That pursuant to said agreement he . . . did undertake . . . to induce and influence, and did induce and influence, the officers of the said Hillside Coal and Iron Company, and of the Erie Railroad Company, which owned all the stock of said coal company, . . . to sell the interest of the said Hillside Coal and Iron Company in said . . . dump for . . . $4500. That . . . during the time the aforesaid negotiations were in progress the said Erie Railroad Company was a common carrier, engaged in interstate commerce and was a litigant in certain suits . . . then pending in the United States Commerce Court; and the said Robert W. Archbald, judge as aforesaid, well knowing these facts, wilfully, unlawfully and

corruptly took advantage of his official position as such judge to induce and influence the officials" of said companies to sell said dump to him so that he could make a profit thereout, and "through the influence exerted by reason of his position as such judge, wilfully, unlawfully and corruptly did induce" them to make the sale. "Wherefore the said Robert W. Archbald was and is guilty of misbehavior as such judge and of a high crime and misdemeanor in office."

2nd. That the Marian Coal Company which was "engaged in the business of washing and shipping coal, . . . had filed before the Interstate Commerce Commission a complaint against the Delaware, Lackawanna and Western Railroad Company and five other railroad companies as defendants, charging said defendants with discrimination in rates and with excessive charges for the transportation of coal shipped by said Marian Coal Company over their respective lines of road; that all of the said defendants were carriers engaged in interstate commerce. That the decision of the said case by the Interstate Commerce Commission, at the instance of either party thereto, was subject to review by the United States Commerce Court." That the stockholders of said Marian Coal Company had "employed . . . an attorney to settle the case . . . and to sell to the Delaware, Lackawanna & Western Railroad Company, 2/3 of the stock of the said Marian Coal Company," which railroad "was a party litigant" in a case then pending in the United States Commerce Court. "That the said Robert W. Archbald, being judge as aforesaid and well knowing these facts, did, then and there, engage for a consideration to assist the said (attorney) . . . to settle the aforesaid case" and to sell said stock, and in pursuance thereof did undertake "to induce and influence the officers" of said railroad company to agree thereto; "and the said Robert W. Archbald thereby wilfully, unlawfully and corruptly did use his influence as such judge in the attempt to settle said case and to sell said stock. . . . Wherefore the said Robert W. Archbald was and is guilty of misbehavior as such judge and of a high crime and misdemeanor in office."

3rd. That being such judge, he "did secure from the Lehigh Valley Coal Company, a corporation, which coal company was then and there owned by the Lehigh Valley Railroad Company, a common carrier engaged in interstate commerce, and which railroad company was at that time, a party litigant in certain suits then pending in the United States Commerce Court . . . all of which was well known to said Robert W. Archbald, an agreement which permitted said Robert W. Archbald and his associates to lease a culm dump, known as Packer No. 3, . . . which

said culm dump the said Robert W. Archbald and his associates agreed to operate and to ship the product of the same exclusively over the lines of the said Lehigh Valley Railroad Company; and that the said Robert W. Archbald unlawfully and corruptly did use his official position and influence as such judge to secure from the said coal company the said agreement. Wherefore the said Robert W. Archbald was and is guilty of misbehavior as such judge and of a misdemeanor in such office."

4th. That the said Robert W. Archbald, "while holding the office of United States circuit judge and being a member of the United States Commerce Court, was and is guilty of gross and improper conduct, and was and is guilty of a misdemeanor" in that while a certain suit was pending between the Louisville and Nashville Railroad Company and The Interstate Commerce Commission, and after argument thereof, he "secretly, wrongfully and unlawfully did write a letter to the attorney for said Louisville and Nashville Railroad Company, requesting said attorney to see one of the witnesses who had testified in said suit on behalf of said company, and get his explanation and interpretation of certain testimony that the said witness had given in said suit, and communicate the same to the said Robert W. Archbald, which request was complied with by said attorney;" and later on he did "as judge of said court, secretly, wrongfully and unlawfully" again write and "request and solicit the said attorney for the said railroad company, to make and deliver to the said Robert W. Archbald a further argument in support of the contentions of said attorney . . . which request was complied with by said attorney, all of which on the part of said Robert W. Archbald was done secretly, wrongfully and unlawfully, and which was without the knowledge or consent of the said Interstate Commerce Commission or its attorneys. Wherefore the said Robert W. Archbald was and is guilty of misbehavior in office, and was and it guilty of a misdemeanor."

5th. "That in the year 1904 (a third party) . . . purchased a two-thirds interest in a lease on certain coal lands owned by the Philadelphia and Reading Coal and Iron Company;" that said company alleged "that the lease under which he claimed had been forfeited;" that he then offered "to relinquish any claim that he might have under the said lease provided that the . . . company would give him an operating lease on what was known as the Lincoln culm bank," which was declined in accordance with the general policy of the said coal company; that after trying through attorneys and friends to induce the company to reconsider its decision, he "called upon Robert W. Archbald" then and

now such judge, "and asked him, the said Robert W. Archbald to intercede in his behalf," and the latter "well knowing all the aforesaid facts, did wrongfully attempt to use his influence as such judge to aid and assist the said (third party) to secure" said operating lease which the officials of said company "had theretofore refused to grant, which said fact was also well known to the said Robert W. Archbald. That the said Robert W. Archbald, judge as aforesaid, shortly after the conclusion of his attempted negotiations . . . wilfully, unlawfully and corruptly did accept, as a gift, reward or present, from the said (third party) tendered in consideration" of said favor and others "a certain promissory note for $500 executed by the firm . . . of which the said (third party) was a member. Wherefore the said Robert W. Archbald was and is guilty of misbehavior as a judge and high crimes and misdemeanors in office."

6th. That while such judge, he "did unlawfully, improperly and corruptly attempt to use his influence as such judge with the Lehigh Valley Coal Company and the Lehigh Valley Railway Company to induce the officers of said companies to purchase a certain interest in a tract of coal land containing 800 acres, which interest at said time belonged to certain persons known as the Everhardt heirs. Wherefore the said Robert W. Archbald was and is guilty of misbehavior in office, and was and is guilty of a misdemeanor."

7th. That while there was pending in the United States District Court, of which he was then judge, a suit between the Plymouth Coal Company and the Equitable Fire and Marine Insurance Company, which "coal company was principally owned and entirely controlled by (another third party), which fact was well known to said Robert W. Archbald . . . the said Robert W. Archbald and the said (third party) wrongfully and corruptly agreed together to purchase stock in a gold mining scheme in Honduras, Central America, for the purpose of speculation and profit; that in order to secure the money with which to purchase said stock, the said (third party) executed his promissory note in the sum of $2500 payable to Robert W. Archbald and (a fourth party) which said note was endorsed then and there by the said Robert W. Archbald;" that after said suit was decided in favor of said coal company, "the said (third party), with the knowledge and consent of said Robert W. Archbald, presented said note" to one of said (third party's) counsel "for discount which was refused, and which was later discounted by a bank and has never been paid. All of which acts on the part of the said Robert W. Archbald were improper, unbecoming and

constituted misbehavior in his said office as judge, and rendered him guilty of a misdemeanor."

8th. That while he was a judge in said United States District Court, there was pending a suit against the Marian Coal Company, "which action involved a large sum of money, and which defendant coal company was principally owned and controlled by one Christopher G. Boland and one William P. Boland, all of which was well known to said Robert W. Archbald;" that while said suit was pending he "wrongfully agreed and consented" that a note for $500 drawn by another third party "and endorsed by the said Robert W. Archbald," "should be presented to the said Christopher G. Boland and the said William P. Boland, or one of them, for the purpose of having the said note discounted, corruptly intending that his name on said note would coerce and induce the said Christopher G. Boland and the said William P. Boland, or one of them, to discount the same because of the said Robert W. Archbald's position as judge, and because the said Bolands were at that time litigants in his said court. Wherefore the said Robert W. Archbald was and is guilty of a gross misconduct in his office as judge, and was and is guilty of a misdemeanor in his said office as judge."

9th. That while such district judge he "did draw a note in his own proper handwriting, payable to himself, in the sum of $500, which said note was signed by one (the same third party) . . . well knowing that his endorsement would not secure money in the usual commercial channels, then and there wrongfully did permit the said (third party) to present said note for discount . . . to an . . . attorney at law and practitioner in said District Court . . . and a short time prior thereto a party defendant in said District Court presided over by said Robert W. Archbald" whereby he "wrongfully and improperly used his influence as such judge to induce the said (practitioner) to discount the same; that the said note was then and there discounted by the said (practitioner) and the same has never been paid, but is still due and owing. Wherefore the said Robert W. Archbald was and is guilty of gross misconduct in his said office, and was and is guilty of a misdemeanor in his said office as judge."

10th. That while holding said office of district judge he "wrongfully and unlawfully did accept and receive a large sum of money . . . from (another third party) . . . for the purpose of defraying the expenses of a pleasure trip of the said Robert W. Archbald to Europe; that the said (third party), at the time of the giving of said money and the receipt thereof by

the said Robert W. Archbald, was a stockholder and officer in various and divers interstate railway corporations . . . and various other corporations engaged in the mining of coal and in the development of agricultural and timber land in various parts of the United States; that the acceptance by the said Robert W. Archbald, while holding said office of United States district judge, of said favors from an officer and official of the said corporations, any of which in the due course of business was liable to be interested in litigations pending in the said court, over which he presided as such judge, was improper and had a tendency to and did bring said office of district judge into disrepute. Wherefore the said Robert W. Archbald was and is guilty of misbehavior in office, and was and is guilty of a misdemeanor."

11th. That while holding said office of district judge he did "wrongfully and unlawfully accept and receive a sum of money in excess of $500, which sum of money was contributed and given to the said Robert W. Archbald by various attorneys who were practitioners in the said court presided over by the said Robert W. Archbald; that said money was raised by subscription and solicitation from said attorneys by two of the officers of said court . . . both . . . having been appointed to the said positions by the said Robert W. Archbald, judge aforesaid. Wherefore said Robert W. Archbald was and is guilty of misbehavior in office, and was and is guilty of a misdemeanor."

12th. That while acting as such district judge he appointed "a general attorney for the Lehigh Valley Railroad Company, a corporation and common carrier doing a general railroad business . . . as a jury commissioner in and for said judicial district (who) . . . by virtue of said appointment and with the continued consent and approval of the said Robert W. Archbald, held said office and performed all the duties pertaining thereto during all the time the said Robert W. Archbald held said office of United States district judge, and during all of said time the said (appointee) continued to act as a general attorney for the said Lehigh Valley Railroad Company; all of which was at all times well known to the said Robert W. Archbald. Wherefore the said Robert W. Archbald was and is guilty of misbehavior in office and was and is guilty of a misdemeanor."

13th. That while he "acted as such United States district judge and judge of the United States Commerce Court he, the said Robert W. Archbald, at divers times and places, has sought wrongfully to obtain credit from and through certain persons who were interested in a result of suits then pending and suits that had been pending in the court over which he presided as

judge (and) . . . did undertake to carry on a general business for speculation and profit in the purchase and sale of culm dumps, coal lands and other properties, and for a valuable consideration to compromise litigation pending before the Interstate Commerce Commission, and in the furtherance of his effort to compromise such litigation and of his speculation in coal properties, wilfully, unlawfully and corruptly did use his influence as a judge of the said United States Commerce Court to induce the officers of . . . railroad companies engaged in interstate commerce . . . to enter into various and divers contracts and agreements in which he was then and there financially interested with divers persons . . . without disclosing his said interest therein on the face of the contract but which interest was well known to the officers and agents of said railroad companies. That the said Robert W. Archbald did not invest any money or other thing of value in consideration of any interest acquired or sought to be acquired (therein) . . . but used his influence as such judge with the contracting parties thereto, and received an interest . . . in consideration of such influence in aiding and assisting in securing same. That the said several railroad companies were and are engaged in interstate commerce, and at the time . . . had divers suits pending in the United States Commerce Court, and that the conduct and efforts of the said Robert W. Archbald in endeavoring to secure and in receiving such contracts and agreements from said railroad companies was continuous and persistent from the said 31st day of March, 1911, to about the 15th day of April, 1912. Wherefore the said Robert W. Archbald was and is guilty of misbehavior as such judge and of misdemeanors in office."

He was convicted on the 1st, 3rd, 4th, 5th and 13th articles, acquitted on the remainder, and sentenced to removal from office, and to disqualification from holding any office of honor, trust or profit under the United States.

SUGGESTED RULES OF PROCEDURE AND PRACTICE FOR THE SENATE OF THE UNITED STATES IN IMPEACHMENT CASES.

1. Articles of impeachment prepared by the House of Representatives may be presented by any member or members thereof, deputed by it for that purpose, at any time the Senate is in legislative session.

2. Upon presentation of said articles, the Presiding Officer shall forthwith issue a summons in the following form to the person or persons accused therein:

"The United States of America, ss.:

The Senate of the United States to.....greeting:

Whereas the House of Representatives of the United States of America, did, on the.....day of.....A. D....., exhibit to the Senate of the said United States articles of impeachment against you, the said.....in the words and figures following:

(Here insert the articles.)

and demand that you the said.....should be put to answer the accusations set forth in said articles, and that such proceedings. examinations, trials and judgments might be had as are agreeable to the Constitution and laws;

Now you, the said....., are therefore hereby notified and required to cause an appearance to be entered for you, and to file your plea or answer to each and every of said articles, with the clerk of the said Senate, within fifteen days after the service hereof upon you, and then and thereafter to abide by, obey and perform such orders, directions and judgments as shall be made in said proceedings in accordance with said Constitution and laws.

In witness whereof the Presiding Officer of the said Senate has hereunto set his hand, and affixed the seal of the said Senate, this.....day of....., A. D....., and of the Independence of the United States.....

Presiding Officer of the Senate."

3. Said writ of summons shall be served by the Sergeant-at-Arms of the Senate, or an assistant of his approved by the Presiding Officer, by handing a true and attested copy thereof, and a copy of the "Rules of Practice and Procedure of the Senate in Impeachment Cases" to the respondent personally, if conveniently to be found, if not, by leaving them at his usual place of abode, or, if this also cannot conveniently be done, by leaving them at his usual place of business with some adult person found thereat.

4. An appearance by the respondent, in person or by counsel in the manner hereinafter set forth, shall in all respects be equivalent to a service of the summons; but where the summons has been served, and no appearance has been entered, the person making the service shall endorse upon the summons an affidavit of the time, place and manner of service, and if it appears thereby that the service has been duly made, the facts averred in said affidavit shall be accepted as true.

5. If the summons cannot be served in the manner provided, the person named in the precept to serve it shall forthwith report

the facts to the Presiding Officer, and the Senate, from time to time, will make such further orders for service, by publication or otherwise, as to it shall seem best, and service thus made shall be equivalent to personal service on the respondent.

6. The respondent may appear in person or by counsel, and may, from time to time, select other or additional counsel to represent him. All appearances shall be in writing, in the form hereinafter set forth, shall be filed with the Secretary of the Senate, and shall be acknowledged before said Secretary, or before a judge of some court of the United States.

7. Appearances by the respondent personally shall be in the following form:

"In the matter of the impeachment of.....by the House of Representatives.

To the Senate of the United States:

I hereby acknowledge the receipt of a copy of the summons, and 'Rules of Procedure and Practice of the Senate in Impeachment Cases,' directed to be served upon me in the above proceeding, and hereby enter my appearance in my own proper person.

In witness whereof I have hereunto set my hand this..... day of.....A. D....., and of the Independence of the United States the.....

Respondent.

United States of America, ss.:

Before the undersigned a judge of (here state the title of the court; or the secretary of the Senate of the United States, as the case may be) personally appeared..... and acknowledged the facts set forth in the foregoing appearance to be true.

In witness whereof I have hereunto set my hand and the seal of said court (or of said Senate, as the case may be) this .....day of.....A. D....., and of the Independence of the United States the ....."

8. Appearances of the respondent by counsel shall be in the following form:

"In the matter of the impeachment of..... by the House of Representatives.

To the Senate of the United States:

I hereby acknowledge the receipt of a copy of the summons and 'Rules of Procedure and Practice of the Senate in Impeachment Cases,' directed to be served upon me in the above proceeding, and hereby appoint (here name the counsel), as my counsel in said proceeding.

In witness whereof I have hereunto set my hand this.....

day of.....A. D....., and of the Independence of the United States the.....

Respondent."

(Here insert the same form of acknowledgment as when the respondent appears personally, and continue.)

"To the Secretary of said Senate:

Enter our appearance for....., the respondent in the above proceeding.

Attorneys for said Respondent."

9. If the respondent desires to be heard in person or by counsel, be must plead guilty to or answer each of the articles of impeachment separately, but he may accompany his answer with a motion to dismiss any or all the articles. The answer to each article must be complete in and of itself, without reference to the answer to any other article, and must be a concise statement of the facts only, without any argument. The motion to dismiss must also be complete in and of itself, must concisely state the reasons why the Senate should dismiss the article, and must contain no argument. Answers must be sworn to by the respondent that the facts therein stated are true as he verily believes, and motions to dismiss that they are not interposed for delay.

10. Appearances and answers, with the accompanying motions to dismiss, if any, shall be filed in duplicate, and one copy thereof shall be forthwith sent by the Secretary of the Senate to the House of Representatives.

11. The House of Representatives may, within ten days after the receipt of a copy of the answer, if any, file their replication thereto, or they may reply to the answer to certain articles, and move for judgment against the respondent on his answer to other articles. Upon the hearing of such motions the facts averred in the answer shall be taken as true, as shall also the facts averred in the articles of impeachment except to the extent they are denied or qualified by the answer.

12. Unless otherwise ordered, motions to dismiss, and motions for judgment against the respondent upon his answers, shall be argued and decided before further proceedings are had.

13. If a plea of "Guilty" is filed to any article, or if judgment is entered against the respondent on his answer to any article, the Senate shall proceed at once to final judgment, unless it is ordered that said judgment shall await the disposition of the proceedings on any or all the other articles.

14. If no answer or plea be filed to any article the Secretary shall file in the name of and for the respondent the plea of "Not Guilty," and notify the House of Representatives accordingly; but the respondent shall not be heard in person or by counsel until he does answer or pleads guilty.

15. Within ten days after the case is ready for trial the Managers for the House of Representatives, and respondent or his counsel, shall file with the Secretary of the Senate a list of the witnessess each desires to call, together with the address of each witness. Said lists may be added to from time to time.

16. When the President, Vice-President or a Justice of the Supreme Court is impeached, the evidence shall be taken before the Senate.

17. In all other cases the evidence shall be taken before three of the Judges of the Court of Appeals of the District of Columbia, or three of the other judges of any court of the United States, or part of the evidence may be taken before one set of judges and part before the other or others. When sitting for that purpose said court shall have all the implied and conferred powers incident to courts of the United States in the trial of other cases. The Managers of the House of Representatives and respondent or his counsel, if he has answered the articles, shall have the right to examine and cross-examine the witnesses, and by leave of the court may produce other witnesses and such documentary evidence as may be adjudged pertinent. After the evidence is concluded the court receiving it shall certify it to the Senate.

18. When the President or Acting President of the United States is impeached, the Chief Justice of the Supreme Court of the United States shall preside at all times during the consideration and until the final disposition of the impeachment. In such cases the Secretary of the Senate shall give the Chief Justice notice of the time and place fixed for the consideration of the articles of impeachment, with a request that he attend. In all other cases of impeachment the Senate will from time to time choose one of its members to act as its Presiding Officer until the final disposition of the impeachment.

19. At the opening of each session of the Senate for the consideration of the articles of impeachment, proclamation shall be made in the following form:

"Hear ye! Hear ye! Hear ye! The Senate is now open for the consideration of the articles of impeachment by the House of Representatives against....., and all persons are commanded to keep silence on pain of punishment for contempt of the authority and dignity of the Senate."

20. At all times while the Senate is sitting upon the trial of an impeachment the doors of the Senate shall be kept open, except when it is deliberating preparatory to its final vote upon the articles of impeachment, or when the Senate shall direct the doors to be closed while deliberating upon any other matter.

21. Before any action is taken upon the articles of impeachment the Senators shall be sworn in the following manner:

"I solemnly swear (or affirm, as the case may be), that in all things pertaining to the trial of the impeachment of ....., now pending, I will do impartial justice according to the Constitution and laws. So help me God."

Each day thereafter, during the progress of the proceedings, there shall be a call of the names of the Senators who have not theretofore been sworn, and a like oath shall be administered to such of them as shall then appear.

22. When the evidence is being taken by a Court all writs and other process in relation thereto shall be issued by it as in other cases tried in the courts of the United States. In all other instances all writs and other process shall be issued in the names of the Senate, and except as herein otherwise provided, shall be signed by the Secretary of the Senate.

23. When the pleadings are completed the Senate may of its own motion, fix the times and places where the evidence is to be taken, or either side may, on three days' notice to the opposite party, apply to the Senate to fix or change such times and places.

24. The subpoena to the witnesses shall be in the following form:

"To.....greeting:

You and each of you are hereby commanded to appear before the Senate of the United States (or the Court selected, naming it) on the.....day of.....A. D....., at the Senate Chamber in the City of Washington (or court room, designating it), then and there to testify in a cause which is pending before the Senate of the United States in which the House of Representatives have impeached....., and you are further commanded to bring with you the following (here shall be filled in a statement of any books, papers or other documents required to be produced).

In witness whereof I have hereunto set my hand and affixed the seal of the said Senate (or of said court) this.....day of .....A. D....., and of the Independence of the United States the .....

Secretary of the Senate (or Clerk of said Court)."

25. Subpoenas shall be served by any assistant of the Sergeant-at-Arms approved by the Presiding Officer of the Senate, or by any United States Marshal authorized to serve process issued by any Court of the United States, and may be served upon the witnesses named therein wherever they may be found.

26. The person serving the subpoena shall endorse thereon an affidavit of the time, place and manner of service, and shall forthwith return the subpoena with the affidavit of service to the Sergeant-at-Arms of the Senate, or the Clerk of said Court. If it appears by said affidavit that the parties named were subpoenaed as required by law, the facts averred therein shall be sufficient upon which to found an attachment for the arrest of the person subpoenaed, if he shall fail to comply with the requirements thereof.

27. The Secretary of the Senate shall make all necessary preparations in the Senate Chamber, for the accommodation of the Managers of the House of Representatives, and of the respondent and his counsel, and for the orderly conduct of the proceedings.

28. Unless otherwise ordered, trials and arguments before the Senate shall commence at 2 P. M. of each day and continue until 6 P. M. thereof, day by day, Sundays and legal holidays alone excepted. Trials and arguments before any court appointed to take the evidence shall be had at such times as the court shall direct, but shall be expeditiously had, preference being given thereto over all the other business of said courts.

29. The prosecution of the respondent shall be conducted by the Managers of the House of Representatives, and the defense thereof by the respondent and his counsel.

30. In cases tried before the Senate, on the first day of the trial one Manager for the House of Representatives shall make a concise statement of the facts which are admitted, and those which the Managers expect to prove, to be followed immediately by a concise statement for the respondent as to the facts which he expects to prove. The opening statement of each side shall not consume over two hours, and shall contain no argument as to the law or facts of the case, but either party may then or thereafter file a brief of law, which shall be printed with and form part of the proceedings.

31. In cases tried before the Senate, on the second day of the trial the Managers of the House of Representatives shall proceed with their evidence, and shall continue with its production until all their evidence in chief is concluded. Respondent shall then proceed with his evidence and shall continue until its con-

clusion. The Managers of the House of Representatives may then offer their rebuttal evidence, and the respondent his surrebuttal until all the evidence is concluded. Nothing herein contained, however, shall prevent the introduction of evidence out of its ordinary place, if in the opinion of the Senate a sufficient reason therefor is shown.

32. No evidence shall be produced for the purpose of proving any fact not denied or qualified by the answer of the respondent, or relating solely to any article which has been dismissed, or upon which judgment has been entered against the respondent on his answer thereto.

33. Witnesses shall be sworn in the following form:

"You.....do swear (or affirm, as the case may be), that the evidence you shall give in the case now pending between the United States and.....shall be the truth, the whole truth, and nothing but the truth. So help you God." Said oath may be administered by the Presiding Officer, by any other officer of the Senate, by a Judge or the Clerk of the Court, or by any duly authorized person.

34. When the case is tried before the Senate, if a Senator is called as a witness, he shall be sworn or affirmed, and give his testimony standing in his place.

35. Witnesses shall be examined by one person on behalf of the party producing them, and then cross-examined by one person on the other side.

36. In cases tried before the Senate, all objections to evidence, and all motions made by the parties during the trial shall be addressed to the Presiding Officer, and if he, or any Senator, shall require it, shall be reduced to writing, and read at the Secretary's table. The Presiding Officer may, in the first instance, decide all such matters, or he may, at his option, submit them to a vote of the Senate. If he decides them, his ruling shall stand as the judgment of the Senate, unless some member thereof shall ask that a formal vote be taken thereon, in which case they shall be submitted to the Senate for decision. In cases tried before a court the judges thereof shall decide such matters as in other cases.

37. All preliminary or interlocutory questions, and all motions may be argued by not over two persons on each side, the party moving or objecting having the opening and closing of the argument. In such matters, except on motions to dismiss and motions for judgment against the respondent on his answers, not over one hour shall be taken on each side.

38. While the Senate is in open session no member shall debate or argue any matter whatsoever, or make any statement in regard thereto. All motions (except motions to adjourn), all orders asked for, and all questions to be propounded for a member to a witness, shall be reduced to writing, and put by or for the Presiding Officer.

39. The final argument on the merits may be made by not over two persons on each side, and the argument shall be opened and closed on the part of the Managers for the House of Representatives.

40. When deliberating behind closed doors no member shall speak more than once on any question, more than ten minutes on any interlocutory matter, nor more than half an hour on the question of the guilt or innocence of the respondent.

41. The final votes upon motions to dismiss, upon motions for judgment against the respondent upon his answers, and upon the guilt or innocence of the respondent of the charges made in the articles of impeachment, shall be taken by yeas and nays. All other votes shall be taken without a division, unless the yeas and nays be demanded by one-fifth of the members present, in which event the vote shall be so taken.

42. A vote of two-thirds of the Senators present shall be necessary to sustain a motion for judgment against the respondent upon his answers, or to convict him on the final vote upon the articles of impeachment; but a majority vote of the members present shall be sufficient to dispose of any other matter. In all cases a quorum of the Senate must be present and vote upon the question to be decided.

43. The vote upon each motion to dismiss, upon each motion for judgment against the respondent upon his answers, and the final vote upon each article of impeachment, shall be taken separately.

44. The form of the final vote taken upon the articles of impeachment shall be as follows:

"Do you find the respondent.....guilty or not guilty of treason (or bribery, or a high crime or misdemeanor, as the case may be), as charged in the....article of impeachment?"

45. If two-thirds of the members present do not vote "guilty" as to the articles voted upon, the Presiding Officer shall forthwith announce the fact, and a judgment of acquittal shall be entered thereupon. If two-thirds of the members present vote "guilty" as to any article voted upon, the Presiding Officer shall forthwith announce that fact, and the Senate may proceed to

pronounce judgment thereon, without voting upon any of the other articles, or it may postpone pronouncing judgment until the final vote on all the articles. If the respondent be found guilty a certified copy of such judgment shall be deposited in the office of the Secretary of State.

46. The Presiding Officer shall have power, with the aid of the Sergeant-at-Arms and such other assistance as either of them may deem necessary, to enforce, execute and carry into effect all the orders, mandates, judgments, rules and regulations of the Senate, and, subject to an appeal to the Senate by any five members thereof, to prescribe the punishment for contempt of and disobedience to its authority, writs, process, orders, rules, regulations, mandates and judgments.

47. The adjournment of the Senate sitting for the trial of an impeachment shall not operate as an adjournment of the Senate, but the Senate shall thereupon resume the consideration of its legislative and executive business.

48. If the Senate shall at any time fail to sit for the consideration of articles of impeachment, on the day or hour fixed therefor, the Senate may, by an order to be adopted without debate, fix a day and hour for resuming such consideration.

49. The Secretary of the Senate shall record the proceedings in cases of impeachment as in the case of legislative proceedings, and the same shall be reported and acted upon in the same manner as such legislative proceedings.

50. All the foregoing rules for the conduct of the trial of an impeachment, and all orders on that subject made by the Senate during the trial, may be suspended or changed at any time by a majority vote of the members present.

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